

to raising his voice during the meeting on January 5, 2008, with Jackson, and Jackson cried during that meeting; Paulk admits that “I probably shouldn’t have done it.”); *see* Plaintiff’s Response in Opposition at pp. 24-26.

b. Paulk depo. at 87:14-16 (Paulk was unable to identify anyone whose work had been disrupted by the meeting in his office with Ms. Jackson); *see* Plaintiff’s Response in Opposition at pp. 24-26.

c. Paulk depo. at 104:2-4 (Jackson signed the taping policy memo by the deadline established by Paulk); *see* Plaintiff’s Response in Opposition at 26.

d. Deposition of Samuel Palmer (“Palmer depo.”) at 84:17-85:3, 86:14-19 (L. Daniel Morris made the decision to terminate Ms. Jackson, and Palmer does not know why he made that decision.) There is no evidence in the record as to the reason Mr. Morris decided to terminate Ms. Jackson. *See* Plaintiff’s Response in Opposition at 17.

e. Palmer depo. at 135:14-18 (Palmer does not know which incidents were the basis for Ms. Jackson’s termination.) *See* Plaintiff’s Response in Opposition at 17, 22-23.

f. Palmer depo. at 165:2-11 (Palmer does not know why there was such a long delay between the last incident of alleged misconduct by Ms. Jackson and the recommendation to terminate her.) *See* Plaintiff’s Response in Opposition at 20-22.

Respectfully submitted
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s/ Kell A. Simon
Kell Simon
Alabama State Bar No.: ASB-0214-O77K

CERTIFICATE OF SERVICE

I hereby certify that on this the 24th day of June, 2008, I electronically filed the foregoing with the Clerk of the Court using CM/ECF system, which will send notification to the following:

Jim R. Ippolito, Jr.
Andrew W. Redd
Jason A. Trippe
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s/ Kell A. Simon
Of counsel

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF ALABAMA
3 NORTHERN DIVISION

4 LASHUNDRA
5 JACKSON,

6 Plaintiff,

7 vs.

CIVIL ACTION NO.
2:07-CV-645-MEF

8 STATE OF ALABAMA
9 DEPARTMENT OF
10 TRANSPORTATION,
11 JOE McINNES, in
12 his official
13 capacity as
14 DIRECTOR OF THE
15 STATE OF ALABAMA
16 DEPARTMENT OF
17 TRANSPORTATION,

18 Defendants.

19 * * * * *

20 **DEPOSITION OF BRET PAULK,**

21 taken pursuant to notice and
22 stipulation on behalf of the
23 Plaintiff, in the Ninth Division
Office of the Alabama Department of
Transportation, 1701 I-65 West Service
Road North, Mobile, Alabama, before
Karen Reagan Drinkard, AL-CCR #005,
Certified Court Reporter and Notary
Public in and for the State of Alabama
at Large, on June 18th, 2008,
commencing at 2:45 p.m.

1 APPEARANCES

2
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4 FOR THE PLAINTIFF:

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16 and

17 **JASON A. TRIPPE, ESQUIRE**

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19 Transportation

20 1409 Coliseum Boulevard

21 Montgomery, Alabama 36110

STIPULATIONS

It is stipulated and agreed by and between counsel representing the parties that the deposition of **BRET PAULK** may be taken before Karen Reagan Drinkard, AL-CCR #005, Certified Court Reporter and Notary Public in and for the State of Alabama at Large, without the formality of a commission; and all formality with respect to other procedural requirements is waived; that objections to questions, other than objections as to the form of the questions need not be made at this time, but may be reserved for a ruling at such time as the deposition may be offered in evidence or used for any other purpose by either party as provided by the Federal Rules of Civil Procedure.

It is further stipulated and

1 agreed by and between the parties
2 hereto and the witness, that the
3 signature of the witness to this
4 deposition is hereby waived.

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1 MR. REDD: Usual stipulations?

2 MR. SIMON: That's fine.

3 MR. REDD: Can we have a
4 stipulation in addition
5 to this that whenever a
6 document may refer to
7 LaShundra Yates, that we
8 are talking about
9 LaShundra Jackson?

10 MR. SIMON: Yes.

11 MR. REDD: All right. That's
12 all.

13
14 BRET PAULK, of lawful age,
15 having first been duly sworn,
16 testified as follows:

17
18 **EXAMINATION**

19 **BY MR. SIMON:**

20 Q. Mr. Paulk, my name is Kell Simon. I
21 represent Ms. Jackson in her lawsuit
22 against the Alabama Department of
23 Transportation.

1 A. Nice to meet you.

2 Q. Good to meet you. You received a
3 subpoena to appear here at 9 o'clock
4 this morning; is that right?

5 A. That's right.

6 Q. Okay. And you didn't appear at
7 9 o'clock, did you?

8 A. No, I did not.

9 Q. What was the reason for you not
10 appearing at 9 o'clock?

11 A. Basically I was under the impression
12 that under the law, I wasn't properly
13 served my subpoena.

14 Q. Okay. How did -- what gave you that
15 impression?

16 A. Well, for one, I never saw anybody or
17 signed for it until yesterday late,
18 and I went to the post office and
19 signed for it. And also I never
20 received compensation for my mileage
21 or time spent here today.

22 Q. Okay. What was your mileage to get
23 here today?

1 A. I'm not sure. But basically I'm
2 volunteering. I'm here now.

3 Q. I know you're here now. Did anybody
4 tell you that you didn't need to
5 appear here today?

6 A. No. I just -- I mean --

7 MR. REDD: I told him what the
8 law was.

9 A. You know --

10 MR. SIMON: You told him what
11 the law was?

12 MR. REDD: I told him it was
13 his choice.

14 A. -- to be here.

15 Q. Okay.

16 A. And so basically I'm cooperating.

17 Q. And I appreciate that. When did
18 Mr. Redd tell you what the law was?

19 A. Monday.

20 Q. On Monday? Of this week?

21 A. Uh-huh.

22 Q. Okay. What did you do to get ready
23 for your deposition?

1 A. We met, and basically I kind of
2 referred and read back over some of
3 the documents all in the file
4 pertaining to this and kind of just
5 freshened my memory, because it's been
6 a year and a half since a lot of it
7 has taken place.

8 Q. Who did you meet with?

9 A. Andy Redd and Jason Trippe.

10 Q. How long was --

11 A. Well, Jason wasn't here Monday.

12 Q. How long was the meeting that you had
13 with Mr. Redd?

14 A. I met -- I met with them twice.

15 Q. Okay. When was the first time you met
16 with them?

17 A. Two weeks ago, three weeks ago.

18 Q. Okay. And then when was the second
19 meeting?

20 A. Monday.

21 Q. How long did you meet with them two or
22 three weeks ago? How long was the
23 meeting?

1 A. Approximately an hour.

2 Q. And then how long was your meeting
3 with him on Monday?

4 A. Maybe 30 minutes.

5 Q. Now, you used to be employed at the
6 Alabama Department of Transportation;
7 correct?

8 A. Yes.

9 Q. Okay. What was your job there?

10 A. I was a project engineer.

11 Q. How long were you a project engineer
12 at DOT?

13 A. Approximately a year.

14 Q. Did you have any previous employment
15 before that?

16 A. Within the DOT?

17 Q. No. Anywhere else.

18 A. No.

19 Q. Okay. Did you serve in another
20 capacity at the DOT before you were a
21 project engineer?

22 A. I was an assistant project engineer.

23 I was a graduate of civil engineering

1 the whole -- you know, my full time
2 here. And then I was -- my last year
3 here, I was project engineer.

4 Q. Okay. And when did you leave the DOT?

5 A. Last September of -- yeah, September
6 of '07.

7 Q. And why did you leave?

8 A. Better job opportunity.

9 Q. Who are you working for now?

10 A. Hosea Weaver & Sons.

11 Q. Okay. And what are you doing for
12 them?

13 A. I'm a project manager and estimator.

14 THE REPORTER: Tell me the
15 name again.

16 THE WITNESS: Hosea Weaver &
17 Sons, Hosea, H-O-S-E-A,
18 Weaver, W-E-A-V-E-R, &
19 Sons.

20 Q. (By Mr. Simon:) And are you -- are
21 you assigned to construction projects
22 that are being run by the DOT?

23 A. I am.

1 Q. Are you doing the same thing for
2 Weaver that you were doing for the
3 DOT?

4 A. Somewhat. I'm more watching
5 production and scheduling
6 subcontractors and solving problems on
7 jobs, and also estimating. I didn't
8 do anything like that here,
9 estimating, bidding work.

10 Q. And who is your supervisor?

11 A. Johnny Murphy.

12 Q. And is he a Hosea Weaver employee?

13 A. He is.

14 Q. So you became a project engineer in
15 September of 2006 at DOT?

16 A. Yes, sir, roughly.

17 Q. Okay. Did you take Austin Harville's
18 place? Is that right?

19 A. I did.

20 Q. Okay. Had you done any project
21 engineering before that?

22 A. No.

23 Q. Had you supervised anybody before

1 that?

2 A. A little bit. I was assistant project
3 engineer on a couple of jobs, but I
4 wasn't the project engineer.

5 Q. Okay. And as an assistant project
6 engineer, did you supervise employees?

7 A. Somewhat, on -- on that particular
8 job.

9 Q. Who did you supervise before you
10 became a project engineer?

11 A. Brandy Pettway. There was a
12 consultant, David Cox. I worked with
13 him real close. He doesn't -- he
14 doesn't work for DOT, but he works for
15 a consulting firm, Geotechnical
16 Engineering, I think. I can't think
17 of anybody else out there off the top
18 of my head.

19 Q. And then when you took over
20 Mr. Harville's position, who -- who
21 did you become the supervisor of?

22 A. LaShundra, Raymond Ingram, and I
23 believe Adam Spence.

1 Q. Why was Ms. Jackson terminated from
2 the DOT?

3 A. How do -- what particular event are
4 you asking?

5 Q. What was the reason she was
6 terminated?

7 A. I believe just her -- her conduct,
8 her -- I guess, maybe pattern of her
9 conduct, behavior.

10 Q. How do you know that?

11 A. That's just -- I don't -- I don't know
12 the specific reason for why. I didn't
13 terminate her.

14 Q. I know you didn't terminate her, but
15 why -- how do you know the reasons
16 that she was terminated?

17 A. That's just my opinion.

18 Q. Okay. So you don't really know that
19 she was terminated because of her
20 pattern of behavior?

21 A. I mean, I would have to look at, I
22 guess, her letter, which is above me.
23 I don't terminate people.

1 Q. Her termination letter?

2 A. Yes.

3 (Off-the-record discussion.)

4 Q. Let me show you what I've marked as
5 Plaintiff's Exhibit 4.

6 MR. SIMON: I'm just going to
7 go in order with these
8 exhibits. We used 1
9 through 3 at
10 Mr. McElhenney's
11 deposition.

12 Q. (By Mr. Simon:) Is that Ms. Jackson's
13 termination letter?

14 (The referred-to document was
15 marked for identification
16 as Plaintiff's Exhibit No. 4.)

17 A. Yes.

18 Q. Okay. Can you tell from that why she
19 was terminated?

20 A. Does this state why? No.

21 Q. So can you tell from this letter why
22 she --

23 A. I know --

1 Q. -- was terminated?

2 A. Because she was still under
3 probationary status. She was an EA-1.

4 Q. She was terminated because she was
5 still under a probationary status?

6 A. Well, she was under a probationary
7 status as an EA-1, and they decided
8 that they didn't require her services
9 anymore. So I guess, point being they
10 didn't -- a reason wasn't required of
11 her since she was under probation
12 still.

13 Q. So there was no -- they didn't have a
14 reason to terminate her?

15 MR. REDD: Object to the form.

16 That's not what he said.

17 A. What are you asking?

18 Q. I'm asking you -- you said a reason
19 wasn't required, and I asked you, so
20 they didn't have a reason to terminate
21 her?

22 MR. REDD: Form.

23 A. I'm sure, yes, they had a reason, but

1 this letter doesn't state that reason.

2 Q. It doesn't? Let's go back to my
3 previous question then. I had asked
4 you what were the reasons she was
5 terminated, and you said you could
6 tell if you looked at the letter. You
7 really can't tell from the letter, can
8 you?

9 A. I said I would have to look at the
10 letter, because I've never seen it.

11 Q. Okay. Now that you've --

12 A. It's above my head.

13 Q. Now that you've seen it, you can tell
14 that the letter does not explain why
15 she was terminated; correct?

16 A. That's correct.

17 Q. So you testified earlier that she was
18 terminated for her pattern of behavior
19 and conduct. What is your basis for
20 saying that?

21 A. I've got a whole file that -- that
22 states her pattern of conduct, her --
23 her -- all the events that took place

1 while me and LaShundra worked
2 together.

3 Q. And where is that file?

4 A. It's -- I'm assuming the office
5 manager has it, or whoever keeps up
6 with the personnel files.

7 Q. Okay. So that's not something you
8 have in your personal possession?

9 A. No.

10 Q. Okay. Did -- did anybody ever tell
11 you the reason that Ms. Jackson was
12 being terminated?

13 A. Not that I recall.

14 Q. Okay. When you say she was being
15 terminated for a pattern of behavior,
16 is that just a guess on your part?

17 A. Yes.

18 Q. Were you one of the people that
19 recommended that she be fired?

20 A. No.

21 Q. Did you ever recommend to anybody that
22 Ms. Jackson be fired?

23 A. No.

1 Q. So after the incident on January 5th
2 about the taping policy, you didn't
3 recommend to anybody that she be
4 fired?

5 A. No.

6 (Off-the-record discussion.)

7 Q. And you didn't recommend to anybody,
8 after the October 6th thing about
9 scratches on her car, that she be
10 fired; right?

11 A. No.

12 Q. So if somebody at ALDOT testified that
13 you were the one who made the
14 recommendation to terminate her, that
15 would be false?

16 A. Yes.

17 Q. For a probationary engineering
18 assistant, who would be the person to
19 recommend that that -- that person not
20 finish out their probation and be
21 terminated instead?

22 A. I'm not sure if -- if that would be --
23 I'm not sure who is over -- probably

1 the district engineer --

2 Q. Okay.

3 A. -- I would imagine, would have a
4 say-so in it.

5 Q. Would have had a say-so, but who --
6 who would be the direct supervisor
7 that would make the initial
8 recommendation for termination of a
9 probationary EA?

10 A. I'm not sure. I never had to -- this
11 is -- this is it. I mean, I've never
12 been in this circumstance before, so
13 I'm not sure I can answer that
14 question.

15 Q. Did you have the authority to
16 recommend termination of an inspector
17 under you?

18 A. No. I mean, I could probably make a
19 recommendation. Whether or not that
20 recommendation is taken -- I don't
21 have the authority to recommend that.

22 Q. Okay.

23 A. I can -- I can say anything, but --

1 Q. You could -- you could say to the
2 district engineer, I think this person
3 ought to be terminated; I don't think
4 that she's doing a good job; right?

5 A. Yeah. I mean, you could say that. I
6 mean, anybody could say that.

7 Q. But as the person's direct supervisor,
8 that's something that you really could
9 go to the district engineer and say;
10 right?

11 A. Right.

12 Q. And did you ever do that with regard
13 to Ms. Jackson?

14 A. No.

15 Q. Why did you never recommend that she
16 be terminated when you have a file
17 full of documents showing a pattern?

18 A. Well, they -- they were aware of all
19 the situations, because it went to my
20 direct supervisor and his supervisor,
21 and so everybody was aware of the
22 situation that was going on. And
23 basically all I did was try to carry

1 on -- I still had an office to run and
2 day-to-day activities and
3 responsibilities, and I didn't have
4 time to, you know, meet about this all
5 day every day.

6 Q. Meet about what?

7 A. But you're asking why didn't I go to
8 them and tell them. Basically I
9 documented all these events with
10 LaShundra, and they made their own
11 decision whether or not they wanted to
12 terminate LaShundra.

13 Q. Okay. But you never recommended to
14 them that she be terminated --

15 A. No.

16 Q. -- even though you had the authority
17 to do that?

18 MR. REDD: Objection. I don't
19 think he said he had the
20 authority.

21 Q. You didn't have the authority to go to
22 Mr. Palmer and say --

23 A. Well, I mean, I could say that. But

1 whether or not it's an authority thing
2 or not -- I'm not following you, I
3 guess.

4 Q. Okay. Let me try -- let me try to say
5 it in a different way. It was within
6 your job as a project engineer to
7 supervise the inspectors under you;
8 right?

9 A. Yes.

10 Q. Okay.

11 A. But that's why we have these
12 evaluations too. And how my bosses
13 interpret that evaluation, then they
14 can make their own decisions based on
15 that.

16 Q. So --

17 A. And in this case, all the events that
18 took place that -- that went before
19 them.

20 Q. That went before the evaluation?

21 A. Such as the car or -- Lashundra's car
22 got scratched, that -- that whole
23 event that Jay and Leon Malone and

1 everyone was aware of that. So stuff
2 like that wasn't -- necessarily would
3 just come up during evaluations.

4 Q. So the supervisors having -- the
5 district engineer, the construction
6 engineer, them having the performance
7 evaluations, that's not going to be
8 what makes them decide whether to
9 terminate somebody; right?

10 A. One more time?

11 Q. There could be lots of other kinds of
12 information that they would need
13 before they decided to terminate
14 somebody?

15 A. Yes.

16 Q. Okay. So you as the -- as the -- you
17 were the project engineer, so you
18 supervised the EAs who were
19 inspectors; right?

20 A. Yes.

21 Q. Okay. And at any time, as the
22 supervisor of one of those inspectors,
23 if you thought that they were doing a

1 bad job or that they had some kind of
2 issues, you could have gone to the
3 district engineer and said --

4 A. That's right.

5 Q. -- I think this person needs to be
6 terminated; right?

7 A. That's right.

8 Q. Okay. And -- and the district
9 engineer is the person you would have
10 gone to in that situation?

11 A. That's correct.

12 Q. And while you were supervising
13 Ms. Jackson, you never went to
14 Mr. Palmer and recommended
15 termination?

16 A. No. I never had a problem with
17 LaShundra Jackson's performance. I
18 mean...

19 Q. And if you were supervising an
20 engineering assistant who, say, got
21 into a fight with another employee,
22 and you saw it happen and that person
23 had picked the fight --

1 A. Yes.

2 Q. -- you could go to Mr. Palmer --

3 A. Yes.

4 Q. -- and say, this person needs to be
5 out of here right now; right? You
6 could do that; right?

7 A. I could say that. Whether or not -- I
8 don't know really what your point is
9 that you're getting at, but yeah, that
10 would be one of my responsibilities.
11 If somebody was picking fights and
12 beating up other employees, yeah, I
13 mean --

14 Q. And if somebody was being --

15 A. -- that's a problem.

16 Q. Okay. And if somebody was being
17 insubordinate to you, you could go to
18 Mr. Palmer and say, this person is out
19 of control; I need -- I need him
20 terminated; right?

21 A. I could say that, yes. I mean, I'm
22 able to say that.

23 Q. Did Mr. Palmer ever ask your opinion

1 as to whether you thought Ms. Jackson
2 should be terminated?

3 A. Not that I can recall. I can't
4 remember.

5 Q. Did Mr. Calametti ever ask you that?

6 A. I can't recall.

7 Q. Did anybody at the DOT ever ask you
8 that?

9 A. I mean, we -- basically I told them,
10 when we would have meetings on all
11 these events, what happened. My -- I
12 guess my documentation showed that to
13 them. And you know, they -- they
14 would form, I guess, their own
15 opinions on what course of action to
16 take.

17 Q. All right. So as far as Ms. Jackson
18 was concerned, you pretty much left it
19 up to them what they wanted to do with
20 it; is that right?

21 A. Yes, sir.

22 Q. Now, you testified a minute ago that
23 you never had a problem with

1 Ms. Jackson's performance?

2 A. (Nods head.)

3 Q. Did you work with her on a consistent
4 basis?

5 A. Yes, sir.

6 Q. Okay. How often would you -- would
7 you work with her every week?

8 A. You know, a couple -- maybe, once a
9 week, two times a week.

10 Q. Okay. And what kind of things would
11 y'all do together, work-wise?

12 A. Just kind of on-the-job training, you
13 know, stuff that she was inspecting
14 and trying to teach her what to look
15 for, you know, making sure it was
16 within compliance of specifications
17 and how to measure something and
18 things like that.

19 Q. Okay. So you saw her while she was
20 working out on projects?

21 A. Yeah.

22 Q. Did she ask you questions about stuff?

23 A. Sometimes, yeah.

1 Q. Okay. Did she seem like she was
2 interested in the work that you were
3 wanting her to learn?

4 A. Uh-huh.

5 Q. Is that a yes?

6 A. Yes.

7 Q. Okay. And was that true the whole
8 time that she worked under you?

9 A. Yes.

10 Q. I'm going to show you what I have
11 marked as Exhibit 5 to your
12 deposition, which is Ms. Jackson's
13 mid-appraisal --

14 THE REPORTER: What appraisal?

15 MR. SIMON: Mid-appraisal -- I
16 believe -- I'm sorry. I
17 might have said that
18 wrong.

19 Q. (By Mr. Simon:) Can you tell me what
20 this document is that I marked as
21 Exhibit 5?

22 (The referred-to document was
23 marked for identification

1 as Plaintiff's Exhibit No. 5.)

2 A. I believe this is her performance
3 appraisal.

4 Q. Okay.

5 A. No, no. This is her mid-appraisal.

6 Q. Okay. And her mid-appraisal was done
7 by you --

8 A. Uh-huh.

9 Q. -- it looks like, if you look at the
10 second page, November 2nd, 2006; is
11 that right?

12 A. That's right.

13 Q. Okay. And you sat down with
14 Ms. Jackson at that time and went over
15 how her performance was?

16 A. Uh-huh.

17 Q. Okay.

18 A. Well, I missed the pre-appraisal, and
19 this was my mid-appraisal.

20 Q. Okay. And the pre-appraisal, what --
21 what does -- what happens at the
22 pre-appraisal time?

23 A. Basically her supervisor -- and I --

1 it looks like I signed off on it. But
2 basically at the beginning, the direct
3 supervisor goes over all of these
4 responsibilities and duties with
5 the -- with LaShundra in this case.

6 Q. Okay. And how often are the
7 mid-appraisals done for probationary
8 employees?

9 A. How often?

10 Q. Yeah.

11 A. For --

12 Q. For somebody who is on probation.

13 A. They're done, I think, every --
14 probation is six months, so you try to
15 do it halfway -- at the halfway point.
16 So once.

17 Q. And someone whose probation gets
18 extended like Ms. Jackson's did, do
19 they -- do they get another
20 mid-appraisal before they learn
21 whether they're going to get done with
22 their probation or not?

23 A. I'm not sure.

1 Q. Okay. And when you did your
2 mid-appraisal with Ms. Jackson, did
3 you go over the responsibilities and
4 tell her how she was doing on each of
5 them?

6 A. Yes.

7 Q. Okay. And as far as you can remember,
8 you know, what kind of job was she
9 doing on each of the different
10 responsibilities?

11 A. Well, she was doing that average --
12 you know, average on -- on some. And
13 she had some strengths and some things
14 which I listed there, and also some
15 areas that needed improving.

16 Q. Right. And -- and there's a section
17 on the form where you have to write
18 down something the employee needs to
19 improve on; right?

20 A. Yes, sir.

21 Q. And how long would you say your
22 discussion about the mid-appraisal was
23 with Ms. Jackson?

1 A. Maybe 20 minutes.

2 Q. And did you do one of these for all of
3 your engineering assistants that you
4 supervised?

5 A. Yeah.

6 Q. And Ms. Jackson got a copy of this;
7 right?

8 A. Yes.

9 Q. Okay.

10 (Off-the-Record discussion.)

11 Q. By the time -- by the time you got --
12 sorry. I totally forgot my question
13 right there.

14 By the time you gave
15 Ms. Jackson this mid-appraisal, you
16 had been supervising her for a couple
17 months; is that right?

18 A. Yes.

19 Q. Okay. And did you talk at all with
20 her former supervisor about how her
21 performance was?

22 A. Yes.

23 Q. You did? So you talked to

1 Mr. Harville?

2 A. Yes.

3 Q. Okay. What did Mr. Harville tell you
4 about her job performance?

5 A. I think that, you know -- I -- I can't
6 remember exactly what he said, to be
7 honest with you.

8 Q. Do you remember if he had any
9 particular criticisms of Ms. Jackson's
10 performance?

11 A. No, I don't remember that either.

12 Q. Okay.

13 A. I remember she was new, and she didn't
14 know a whole lot about that type of
15 work.

16 Q. She hadn't done any engineering
17 work --

18 A. No.

19 Q. -- before she got to the DOT, had she?

20 A. Not that I'm aware of.

21 Q. And do you know if she had any
22 schooling in engineering like you did?

23 A. Not that I'm aware of.

1 Q. And at the time that you gave her this
2 mid-appraisal, she hadn't been
3 disciplined for anything, had she?

4 A. I believe she had a counseling.

5 Q. She had a counseling for the day that
6 she complained that her car was
7 vandalized; is that right?

8 A. (Nods head.)

9 Q. Is that considered a form of
10 discipline?

11 A. Yeah. I would think so. We had a
12 meeting on it.

13 Q. You had a meeting on it?

14 A. Uh-huh -- yes.

15 Q. All right.

16 MR. REDD: You need to speak
17 up.

18 Q. (By Mr. Simon:) Now, Ms. Jackson
19 didn't pass her probationary period in
20 December of '06, did she?

21 A. No.

22 Q. Okay. And what was the reason for
23 that?

1 A. Because she hadn't completed algebra
2 class.

3 Q. Was it a policy at the DOT that every
4 probationary engineering assistant had
5 to complete -- had to pass the algebra
6 test and the basic math test before
7 they could get off their probation?

8 A. Yeah. I think locally here, the
9 division engineer, that was one of his
10 criteria.

11 Q. And what makes you think that?

12 A. Based on -- I believe Debra Hadley,
13 our training coordinator, told me
14 that.

15 Q. Do you know if there's any written
16 policy that says that an employee has
17 to pass math and --

18 A. No.

19 Q. Let me finish my question. Do you
20 know if there's any written policy
21 that a probationary engineering
22 assistant has to pass basic math and
23 algebra before they can get off

1 probation?

2 A. Not that I'm aware of.

3 Q. You never saw a policy like that?

4 A. No, sir.

5 Q. Did Ms. Hadley ever tell you that it
6 was within the discretion of the
7 supervisor as to whether the employee
8 would get off probation or not, even
9 if they hadn't passed the class?

10 A. No, sir.

11 Q. So the way she told it to you was, if
12 you don't pass, you don't get off
13 probation?

14 A. That's correct.

15 Q. How did it come to your attention that
16 Ms. Jackson's probation would not be
17 extended?

18 A. I'm sorry?

19 Q. How did -- how did you learn that
20 Ms. Jackson's probation -- I'm sorry.
21 I asked that wrong. How did you learn
22 that Ms. Jackson's probation was going
23 to be extended?

1 A. I'm not -- I'm not sure I remember. I
2 believe a letter was written.

3 Q. Okay. Did you read the letter?

4 A. No, sir.

5 Q. Okay. Was it a letter to Ms. Jackson
6 that said that her probation was going
7 to be extended?

8 A. I'm not sure.

9 Q. Was it your decision to extend her
10 probation?

11 A. No. I made a recommendation.

12 Q. You made a recommendation that her
13 probation --

14 A. Based on not completing the algebra
15 class.

16 Q. And who did you make that
17 recommendation to?

18 A. My boss, Jay Palmer.

19 Q. And who told you that you had the
20 authority to make that recommendation?

21 A. They asked to -- based on the -- based
22 on she didn't complete the algebra
23 class. I believe the mid-appraisal

1 states if you recommend -- or the
2 performance appraisal states that if
3 you make a recommendation to extend
4 it, you have to have a reason why, and
5 that's why I submitted that. And I
6 don't have the performance -- you
7 know, the -- the final evaluation in
8 front of me, but I believe it states
9 that on there.

10 Q. So somebody told you that you had to
11 write a letter recommending that
12 Ms. Jackson's probation be extended?

13 A. No. I think if you have a copy of it,
14 it says, you know, recommend to become
15 permanent status or recommend to
16 extend, and that's the box I think I
17 checked. And then it said give an
18 explanation and state your reason why.
19 But, you have that; you have that
20 letter also.

21 Q. I do.

22 (Off-the-record discussion.)

23 MR. SIMON: I've handed

1 Mr. Paulk what I've
2 marked as Exhibit 6 to
3 the deposition.

4 (The referred-to document was
5 marked for identification
6 as Plaintiff's Exhibit No. 6.)

7 Q. (By Mr. Simon:) Do you recognize that
8 document?

9 A. Yes.

10 Q. Okay. And I think the section that
11 you're referring to is in the middle
12 of the page; right?

13 A. Yes.

14 Q. It is recommended that the employee
15 be -- and then there's a space for
16 typing there?

17 A. Uh-huh.

18 Q. And there's two Xs typed on the little
19 line before it says "continued in
20 probation?"

21 A. Yes.

22 Q. And did you type that on there?

23 A. I had someone in my office type it.

1 Q. Okay. And then it says, reason stated
2 for disciplinary action; right?

3 A. Yes.

4 Q. Okay. Is there any reasons stated in
5 the disciplinary action section on
6 this appraisal?

7 A. No.

8 Q. All right. Where's the reason --

9 A. It's an attached letter.

10 Q. There was a letter attached to this
11 performance appraisal?

12 A. (Nods head.)

13 Q. Okay. What did the letter say?

14 A. It said that I recommend that her
15 probation be extended based on the
16 incompleteness of the algebra class.

17 Q. Okay. And was it your decision to
18 recommend that?

19 A. That was our -- our policy, which was
20 explained to me, so in order to uphold
21 that policy, yes, I made that
22 recommendation.

23 Q. Did you have any discussions with

1 anybody about the need to recommend
2 that?

3 A. Yes.

4 Q. Who did you talk to about it?

5 A. My boss, Jay Palmer.

6 Q. Okay. Where was that conversation
7 held?

8 A. I'm not sure. Probably his office.

9 Q. And tell me what that conversation
10 was.

11 A. I'm sorry?

12 Q. Tell me what you guys talked about
13 during that conversation.

14 A. I don't recall.

15 Q. But at some point Mr. Palmer told you
16 that you were going to have to write a
17 letter recommending extension of
18 probation?

19 A. Yes.

20 Q. Did Mr. Palmer tell you whether he had
21 been instructed by anybody to extend
22 Ms. Jackson's probation?

23 A. I don't recall if he had been told

1 that.

2 Q. When you were talking about it with
3 Mr. Palmer, did he say whether there's
4 any discretion of the supervisors,
5 either you or him, to recommend giving
6 permanent status even though they
7 hadn't passed the test?

8 A. No.

9 Q. So it was always talked about that it
10 was just a done deal, since she hadn't
11 passed, she would have to extend the
12 probation?

13 A. Yes.

14 Q. And did you talk about that when
15 preparing this performance appraisal?

16 A. Yes.

17 Q. Okay. Did Mr. Palmer assist you in
18 preparing Ms. Jackson's performance
19 appraisal?

20 A. Yes.

21 Q. He did?

22 A. Well, I mean, we -- we talked about
23 that prior to preparing this. And

1 that's why I attached a letter.

2 Q. Okay. Did -- did you and Mr. Palmer
3 talk about what ratings Ms. Jackson
4 was going to get on her performance
5 score?

6 A. Yes.

7 Q. Did he tell you what ratings to give
8 her?

9 A. No.

10 Q. Okay. Did you recommend to him what
11 ratings you thought she should get?

12 A. Yes.

13 Q. And did he agree with your
14 recommendations?

15 A. Uh-huh, yes.

16 (Off-the-record discussion.)

17 Q. Let's look at the second page of the
18 performance appraisal. Those are
19 Ms. Jackson's ratings on each of her
20 responsibilities; correct?

21 A. Yes.

22 Q. And did you discuss each of those with
23 Mr. Palmer before you gave Ms. Jackson

1 the performance review?

2 A. Yes.

3 Q. I notice that on the second line
4 "draws, slash, plots" she was given a
5 2 rating. It looks like a 2, and then
6 it looks like your initials are next
7 to it. Can you tell me --

8 A. It was a clerical error from Chris
9 Burdette.

10 Q. Who is Chris Burdette?

11 A. He was the office manager --

12 Q. Okay.

13 A. -- and office engineer. And he
14 typed -- we had these -- they type
15 them on the typewriter, and he types
16 on the typewriter, so I got him to
17 fill this out. And he made an error.
18 And we went back over it with, I
19 think, some whiteout, and it just
20 looked bad, and they had me initial
21 it --

22 Q. Okay.

23 A. -- at that line.

1 Q. Did you do a handwritten copy of the
2 performance review to give to Chris
3 Burdette?

4 A. Yes.

5 Q. Okay. That's how he knew what to type
6 in the boxes?

7 A. Yeah.

8 Q. Okay. And you think your handwritten
9 one had a 3 -- or a 2 in the box that
10 says "draw, slash, plots?"

11 A. I can't remember.

12 Q. Okay. So you don't remember what --
13 what you originally had wanted to rate
14 her at in that section?

15 A. That's what I originally wanted to
16 rate her at.

17 Q. A 2 or a 3?

18 A. Whatever that says. If it's a 2, it's
19 a 2.

20 Q. Okay.

21 A. He typed the wrong thing, and we had
22 to go back and correct it.

23 Q. Okay. So you think that on your

1 handwritten version, there's going to
2 be a 2 in that box --

3 A. Yes.

4 Q. -- if we get that out and look at it?

5 A. Yes.

6 Q. Okay. Do you know where that -- that
7 document is right now?

8 A. No.

9 Q. When you would do a handwritten draft
10 like that, did -- did those drafts go
11 in the employee's personnel file?

12 A. No. I think it was destroyed. I
13 think I probably threw it away.

14 Q. Let's see. Now, you gave Ms. Jackson
15 a rating of 3 under the responsibility
16 of "communicates." Can you -- can you
17 tell me why she got a 3 on that?

18 A. I thought she did a good job of
19 talking with the contractor.

20 (Off-the-Record discussion.)

21 Q. And I see you also give her a 3 rating
22 which is "exceeds standards" on the
23 responsibility of "calculates;" right?

1 A. Yes.

2 Q. Can you tell me why you gave her a 3
3 for "calculates?"

4 A. Obviously at the time I thought she
5 did a good job.

6 Q. Okay.

7 A. I mean, I don't remember all the
8 little details.

9 Q. Sure. What kind of calculating would
10 probationary employees -- engineering
11 assistants have to do?

12 A. On measuring up the A items or
13 entering it in the field book, you
14 know, calculating items in the field
15 book.

16 Q. Okay. So she was doing a good job on
17 that?

18 A. Yes.

19 Q. Now, as far as Number 2, "draws and
20 plots," you gave her a rating of 2
21 which is "meets standards;" correct?

22 A. Yes.

23 Q. And what kind of drawing and plotting

1 did Ms. Jackson do as a probationary
2 assistant?

3 A. None, zero.

4 Q. She didn't do any?

5 A. At this point in time, no.

6 Q. Okay. What was the reason that she
7 didn't do any?

8 A. Because we didn't have any to do in
9 the office, and I thought, you know,
10 she would be meeting standards. She
11 wouldn't -- I couldn't hold that
12 against her just because at the time
13 we didn't have jobs that required
14 plotting and drawing.

15 Q. Did -- did Ms. Jackson ever get the
16 opportunity to do any drawing and
17 plotting?

18 A. Yes.

19 Q. Okay. When -- when did she?

20 A. After this, I believe, we started
21 working on plotting some -- and -- and
22 she was working with another PCET in
23 the office.

1 Q. Okay. Who is that?

2 A. Adam Smith, in order to provide her
3 training in that area.

4 Q. Okay. So he was training her on
5 her -- he was training her on drawing
6 and plotting?

7 A. Yes, uh-huh.

8 Q. What time frame was that?

9 A. I don't -- I don't remember.

10 Q. Okay. But it was sometime after this
11 performance review?

12 A. I believe so.

13 Q. Okay.

14 A. It might have been close to time to do
15 this that we got her started on it.

16 Q. Oh, okay. And how was she doing on
17 that?

18 A. I felt -- I felt like she was doing --
19 I mean, well for not knowing anything
20 about it. I mean, she was watching
21 Adam mostly, and he was trying to
22 teach her how to plot.

23 Q. And she hadn't had any previous

1 experience doing that; right?

2 A. No. Not that I'm aware of.

3 Q. So if you had to rate her now on how
4 she was doing with drawing and
5 plotting when Adam was training with
6 her, what kind of score do you think
7 you would give her?

8 A. I would say she met standards. She --
9 she had average -- had average skill
10 in that area.

11 Q. All right. Let's talk about Number 3,
12 "operates." What kinds of things was
13 Ms. Jackson operating by the time you
14 gave her this performance review?

15 A. Nuclear gauge. I remember I went out
16 there with her one day on one job and
17 tried to teach her and Andy Hoppes, I
18 believe --

19 THE REPORTER: Tell me the
20 name again.

21 THE WITNESS: Andy Hoppes, I
22 believe, H-O-P-P-E-S.

23 A. -- and instruct them how to use the

1 nuclear gauge to determine compaction.
2 I believe she was also assisting Andy
3 and, I believe, Raymond in concrete
4 tests, slump tests.

5 Q. Is that -- is that -- would that be
6 under "operates?"

7 A. Yes.

8 Q. And what kind of a job did she do on
9 all of those tasks?

10 A. At the time I felt like she met
11 standards.

12 Q. Okay. It doesn't sound like you have
13 any -- any problems with how she was
14 doing that; is that right?

15 A. That's correct.

16 (Off-the-record discussion.)

17 Q. And what would Ms. Jackson have to
18 have done in order to get rated in the
19 "exceeds standards" or "consistently
20 exceeds standards" category on
21 "operates?"

22 A. You would just have to be consistently
23 exceeding standards. If you're asking

1 for an example, I'm not sure off the
2 top of my head.

3 Q. Okay. I mean, I guess I'm going to
4 try to -- is it -- is it a matter that
5 if she had more -- the more experience
6 she got, the better she would do at
7 it, or was there something she could
8 have done especially to exceed
9 standards?

10 A. Well, a lot of, you know, operating
11 stuff like nuclear gauge and running
12 the transit level and things like
13 that, you do get better over time with
14 practice. You become better at it.

15 Q. And did you observe Ms. Jackson
16 improving as she got more
17 experience --

18 A. I mean, we didn't do any of this stuff
19 long enough to -- you know, there's
20 guys here that's been doing that for
21 years, and this all took place in
22 three months. So to answer your
23 question, no. I mean, I -- to know

1 what she would be doing today on this
2 or during that time frame, I don't
3 think -- and I think it's normal that
4 she didn't just make a huge, huge
5 improvement in that sort of a time
6 span.

7 Q. Okay. And let's -- even talking
8 about, like, the period of time after
9 you gave her this appraisal but while
10 you were still supervisor, advising
11 her before she got transferred, did
12 she show improvement in this kind of
13 thing -- this kind of stuff in
14 operating equipment?

15 A. I believe after -- shortly after this,
16 she was in the office, or she had
17 light duty. She couldn't do a lot of
18 stuff, which she never really --
19 nuclear gauge and stuff like that, the
20 guys usually carried that and toted
21 that around because it's kind of
22 heavy.

23 Q. Is that just in general or is that --

1 A. Yeah, in general. So to answer your
2 question, I think she was in the
3 office a good bit.

4 Q. And in the office she wouldn't be
5 operating equipment as much?

6 A. No.

7 Q. Was there any equipment for her to
8 operate in the office?

9 A. Computer, I guess. That's the only
10 thing that comes to mind --

11 Q. Okay.

12 A. -- off the top of my head.

13 Q. Okay. But as far as -- as far as you
14 can remember with Ms. Jackson
15 operating equipment, she was --

16 A. She was fair. I mean, I don't know
17 how much more in detail I can go on
18 that.

19 Q. Let's talk about Number 4, "inspects."
20 She also got a 2 rating on that,
21 "meets standards." What kind of
22 things was she inspecting?

23 A. Off the top of my head, seeding,

1 mulching, asphalt placement --

2 THE REPORTER: What were the
3 first two you said?

4 THE WITNESS: Seeding and
5 mulching.

6 MR. REDD: Is that S-E-A-T or
7 S-E-E-D?

8 THE WITNESS: Seeding --
9 S-E-E-D.

10 A. And, you know, concrete pours, you
11 know, minor structures, drainage
12 structures like head walls or junction
13 boxes.

14 Q. And how was she learning to inspect
15 those things?

16 A. I would come out, you know, every now
17 and then and try to help her on
18 certain things, or the people around
19 her -- she would learn it from the
20 people around her.

21 Q. And who were some of the people around
22 her?

23 A. Andy Hoppes and Raymond Ingram and

1 Mary Ann Stagner.

2 Q. Who was --

3 THE REPORTER: Mary Ann --

4 THE WITNESS: Stagner,

5 S-T-A-G-N-E-R.

6 Q. (By Mr. Simon:) So you kind of
7 counted on those folks to show her the
8 ropes as far as inspecting?

9 A. Yes, yes.

10 Q. But you also observed her doing some
11 inspection work; right?

12 A. Yes.

13 Q. Okay. And to your -- as far as you
14 could tell, she was meeting standards
15 on her inspecting?

16 A. Yes.

17 Q. Okay. As an inspector, do you have
18 to -- well, I guess the next one
19 answers my question. As an inspector,
20 do you have to complete reports?

21 A. Yes.

22 Q. Okay. And you also rated her as
23 meeting standards on completing

1 reports?

2 A. Yes.

3 Q. Did you review some of the reports
4 that she completed while she was
5 inspecting?

6 A. Yes.

7 Q. And she did a pretty good job of that?

8 A. Yes.

9 Q. When was Ms. Jackson moved into the
10 office?

11 A. It seemed like after the first of the
12 year.

13 Q. Was it -- was she moved into the
14 office under your supervision, or was
15 that when she was moved to Tony
16 Cooper?

17 A. I believe she was official --
18 officially in the office under Tony
19 the only -- that's all. But while she
20 was still in that transition period
21 from my office to Tony's office, she
22 was inside most of the time. And I
23 think there's two letters that came

1 out. The first one said no heavy
2 lifting. And so, you know, I enforced
3 that. You know, she doesn't have to
4 lift anything heavy; she's on kind of
5 light duty. And Vince Calametti
6 wanted clarification on that, you
7 know, more detail. And then it came
8 back with another letter stating
9 office only.

10 Q. All right. So after the
11 no-heavy-lifting letter, was she still
12 going out in the field?

13 A. After the what?

14 Q. The -- the letter that said no heavy
15 lifting, the first letter.

16 A. I can't remember. She might have gone
17 out a little bit.

18 Q. Do you think mostly she was working in
19 the office after that?

20 A. I believe so.

21 Q. Did her -- when she was working in the
22 office, was she -- before she
23 transferred to Tony Cooper, when she

1 was working in the office, was she
2 still working up under you?

3 A. Yeah.

4 Q. Okay. And so did you -- did you have
5 the opportunity to observe her work
6 behavior in the office?

7 A. Yes, somewhat.

8 Q. Okay. And how did she do on the stuff
9 she got assigned to in the office?

10 A. She was -- she was doing fine.

11 Q. Okay. What kind of tasks was she
12 assigned to when she was in the
13 office?

14 A. I can't -- I can't remember exactly.
15 I believe she was checking for errors
16 in the field books and catching up on
17 paperwork, stuff like that, correcting
18 errors made out in the field, also
19 helping Adam Spence plot some, you
20 know, get her some training on that.

21 Q. Okay. Was it engineering work? I
22 mean, was it work of an engineering
23 assistant that she was doing?

1 A. Yes.

2 Q. And it was in compliance, as far as
3 you could tell, with her Form 40 and
4 all that stuff?

5 A. Yeah. I mean, this was only a few
6 weeks, so yeah, as far as I know, as
7 far as I remember.

8 Q. Let's look at Number 6, "performs."
9 You rated her as only partially
10 meeting standards on that task -- on
11 that responsibility. What does that
12 term "performs" -- what does that
13 encompass?

14 A. I'm reading back over it. I think
15 that had to do -- I don't see it here,
16 but I believe that was reflected in
17 the algebra class, performance.

18 Q. Wouldn't that be under Line 9 where it
19 says attends/passes?

20 A. That -- that would be. You're right.

21 Q. So why would she get a 1 under
22 performance?

23 A. I don't remember exactly at that time.

1 I must have felt like she needed
2 improvement in that area. She didn't
3 quite meet standards, but she needed
4 to --

5 Q. Did you talk about that with her, what
6 she needed to improve on as far as
7 performance?

8 A. At the time, yeah. I mean, I'm sure I
9 did.

10 Q. Do you remember what you told her?

11 A. No, not exactly.

12 Q. So -- so as far as attends and passes
13 where she got a 1 on that
14 responsibility, that was for the
15 algebra class?

16 A. Maybe she -- concrete, it seemed
17 like -- I don't know if she had been
18 certified in -- in concrete, whatever
19 they call the concrete certification,
20 ACI certification. And she was
21 lacking a little bit in that area
22 because she wasn't certified to
23 perform a concrete test.

1 Q. Okay. Was there a concrete class that
2 she was supposed to --

3 A. I believe so. I believe -- maybe she
4 had just recently been certified or
5 just after this, she got through the
6 ACI class.

7 Q. So she did try to get her
8 certification?

9 A. Yes.

10 Q. Do you know if she got it?

11 A. I'm not sure. I think so, but I'm not
12 a hundred percent.

13 Q. But as far as -- as far as performing
14 her job duties, there's nothing on --
15 there's nothing that sticks out in
16 your mind that she didn't meet
17 standards on?

18 A. I believe it's -- I think it was just
19 because she, you know, hadn't been
20 able to perform. I was trying to
21 teach her some of these items, but as
22 far as going out there and performing,
23 she was mainly more like an observer,

1 instead of actually hands-on. You
2 know, I'm going to do it, and I don't
3 need any assistance doing it.

4 Q. And that was mostly because she
5 probably was new at it?

6 A. Yes.

7 Q. Would you expect somebody that had
8 been an EA for four months to go out
9 there and say, I don't need any
10 assistance; I'm going to be hands-on
11 with this?

12 A. Well, to a certain point, you know,
13 they need some help and training and
14 all. But I felt like at the time that
15 she needed some improvement in that
16 area, in performing those tests.

17 Q. The concrete test?

18 A. That would be one example, yes.

19 Q. And then as far as reading and
20 interpreting, you found that she met
21 standards in that area?

22 A. Uh-huh, yes.

23 (Off-the-Record discussion.)

1 Q. And she also got rated on her work
2 habits; right?

3 A. I thought -- repeat that.

4 Q. Look at the first page of the
5 performance appraisal. Ms. Jackson
6 also got rated on her work habits on
7 the appraisal; right?

8 A. Yes.

9 Q. Okay. And she was satisfactory in all
10 of those areas; right?

11 A. Yes. At this time, yes.

12 Q. Okay. And so you found her attendance
13 was satisfactory?

14 A. Yes.

15 Q. And her punctuality was satisfactory?

16 A. Well, we -- we went over those --
17 those items. And, you know, you've
18 got some stuff here and there along
19 the way that you need to talk about,
20 but overall I felt like she did a
21 satisfactory job.

22 Q. And that would include the
23 cooperation --

1 A. And this was after the blowup in the
2 office over the car scratches.

3 Q. Yes.

4 A. That had already been addressed in the
5 mid-appraisal.

6 Q. Right. Well, even with that, you
7 still felt like she was overall --

8 A. Well, that was addressed and talked
9 about in the mid-appraisal.

10 Q. Right.

11 A. I felt like since that point in time,
12 that she had improved, so I marked her
13 satisfactory.

14 Q. Okay. Now, the -- the probationary
15 appraisal that we've been looking at
16 is Exhibit 6. It covers the period
17 from July, from the first date she was
18 hired, up until she gets this
19 appraisal; right?

20 A. Right.

21 Q. So that -- that incident with the car
22 scratches, that's included in this
23 time period of the -- of the

1 performance review; correct?

2 A. That's correct.

3 Q. So when you're rating her as compliant
4 with rules and cooperating with
5 co-workers, that covers the whole
6 period from July of '06 up until
7 January of --

8 A. Yes. Because that -- that -- you
9 know, that had been addressed, the
10 car, or warning or counseling or
11 whatever it was -- I would have to
12 look back -- at the time. And -- and
13 since that point in time which was --
14 what's the date of this, the 20th?

15 Q. There's some different dates on there.

16 A. At the time this was signed was the
17 20th. The mid-appraisal was on the
18 2nd, so you're looking at a month and
19 a half -- almost two months had gone
20 by with a satisfactory performance.

21 Q. Did you ever find out that there were
22 some other African-American employees
23 who were having the same problems with

1 their cars?

2 A. No.

3 Q. You never heard that about Gwenda
4 Hunter?

5 A. No.

6 Q. And Bertha Alexander?

7 (Off-the-Record discussion.)

8 A. No. Today, that's the first time I've
9 heard of it.

10 Q. Was this the last performance review
11 that you conducted for Ms. Jackson?

12 A. Yes.

13 Q. Now, this review covers the period, as
14 we said, from July 3rd of 2006, to
15 January 2nd, 2007? And at the end of
16 that time period --

17 A. Well, no. It covers from December --
18 it covers through December 20th.

19 Q. Well, at the top it says period
20 covering --

21 A. That's -- that's the six months. Any
22 time around six months, they get --
23 they want these back in the office.

1 Q. Okay.

2 A. So this, as you can tell, was
3 conducted about two weeks prior to
4 that date.

5 Q. Okay. So this only includes her
6 performance up to December 20th?

7 A. Yeah. Do you see that date under her
8 signature?

9 Q. Yeah.

10 A. That's the date we went over it.

11 Q. Okay. And then you continued to
12 supervise her for some time after you
13 did this performance review; right?

14 A. Yes.

15 Q. Okay. And that was until she got
16 transferred to Tony Cooper?

17 A. That's correct.

18 Q. Okay. Did you have any other problems
19 with -- or did you have any problems
20 with Ms. Jackson from the time that
21 you did this performance appraisal up
22 until she got transferred to
23 Mr. Cooper?

1 A. I believe we had a problem getting
2 this signed, if I'm not mistaken.

3 Q. Okay. What kind of problem did you
4 have with that?

5 A. I would have to go back and look
6 through my memos in the file. This
7 document, we had a problem getting
8 LaShundra to sign it, even though it
9 states on there, which I went over
10 with her, that she didn't have to
11 agree, that the signature just, you
12 know, denoted receipt of this form.
13 And also when the -- those policies
14 came out around the first of the year
15 about the tape recorder. That was --
16 that was another problem for
17 Ms. Jackson.

18 Q. Okay. Any other problems that you had
19 with her?

20 A. Not that I recall. I would have to
21 look through my notes again.

22 Q. Okay. And where are those notes? Are
23 you talking about all those --

1 A. They're in the file. Everything is
2 turned in, and I think you have a copy
3 of everything too. So you probably
4 read through it more times than I
5 have.

6 Q. Let's talk about her refusing to sign
7 the appraisal. Did -- did you write
8 her up for that?

9 A. I don't remember.

10 Q. Okay. Did she -- did she actually
11 refuse to sign it?

12 A. I don't recall. I'd have to go back
13 and look through my memos to file. I
14 remember she didn't want to, and it
15 was one of those all-day processes, I
16 think, to get to where that -- finally
17 that evening before we went home for
18 work, we had to meet in Jay Palmer's
19 office, and we had to get Vince
20 Calametti to come in, and he asked her
21 to sign the form.

22 Q. He asked her to sign her performance
23 appraisal?

1 A. Yes.

2 Q. Okay. And that was something you guys
3 were dealing with the whole day?

4 A. I think so.

5 Q. Were you also -- is that something --

6 A. Maybe only -- maybe that afternoon. I
7 mean, don't hold me to all day. I'm
8 trying to remember something that
9 happened December 20th of '06.

10 Q. I know. And did you -- do you recall
11 whether you disciplined Ms. Jackson in
12 any way for what she did with her
13 performance appraisal?

14 A. I don't recall. I'd have to look.

15 Q. You did discipline her about the tape
16 recording policy?

17 A. Yes.

18 Q. Okay. Let's talk about that for a
19 minute. What -- do you recall what
20 day that occurred on?

21 A. No.

22 Q. Okay. How did you get copies of the
23 tape recording policy?

1 A. They were handed out by my supervisor,
2 I guess, or they were put in our box,
3 I think, or maybe by Jeanette Brown.
4 I'm not sure. I can't remember who
5 handed them to us.

6 Q. Okay. That was a new -- a new policy
7 for the 9th Division; right?

8 A. For the State, I believe.

9 (Off-the-Record discussion.)

10 A. I believe it was a statewide policy.

11 Q. Just to make sure we get that clear,
12 let me show you Exhibit 7. Is that a
13 copy of the tape recording policy?

14 (The referred-to document was
15 marked for identification
16 as Plaintiff's Exhibit No. 7.)

17 A. Yes.

18 Q. And at the top it says 9th Division
19 Policy on Recording Devices; right?

20 A. Uh-huh, yes.

21 Q. And the policy actually says it is the
22 policy of the Alabama Department of
23 Transportation, 9th Division, that an

1 individual may record --

2 A. Yes.

3 Q. -- et cetera, right?

4 A. Yes.

5 Q. So as far as I can tell from this
6 document, it is a 9th Division policy.

7 A. Yes.

8 Q. Do you have any evidence that you
9 think supports your idea that it was a
10 department-wide policy?

11 A. No, sir.

12 Q. How many copies of this policy did you
13 get in your box?

14 A. I don't remember that.

15 Q. Okay. Did -- did you get enough
16 copies for all of the inspectors under
17 you to sign?

18 A. Yes.

19 Q. Okay. So you were responsible for
20 making sure that there were copies for
21 your inspectors to sign?

22 A. Yes.

23 Q. Had you heard about this policy before

1 it appeared in your box?

2 A. No.

3 Q. And there was a letter with it that
4 discussed getting the policy signed;
5 right?

6 A. Directed towards me, yes.

7 Q. Yeah. And did you give this policy to
8 Ms. Jackson?

9 A. Yes.

10 Q. Okay. Do you remember where you were
11 when you gave it to her?

12 A. I was in the office, or I might have
13 put it in her box, but I was in the
14 office.

15 Q. Okay. But at some point in time, you
16 guys had a conversation about it;
17 right?

18 A. Yes.

19 Q. Okay. And it was pretty early in the
20 morning?

21 A. That's right.

22 Q. All right. What time did y'all
23 usually get to work?

1 A. Usually 7 -- by 7.

2 Q. Okay. So you were there by 7?

3 A. Oh, yeah, I was there.

4 Q. And Ms. Jackson was there by 7 too?

5 A. I believe so. I think so.

6 Q. And pretty early that morning, she --
7 she -- you and she had a conversation
8 about the tape recording policies;
9 right?

10 A. Yes.

11 Q. And where did that conversation occur?

12 A. In my office.

13 Q. Okay. Did she go in your office to
14 talk to you about it?

15 A. Yes.

16 Q. Okay. Were you already in there, or
17 were -- did you guys go in there
18 together?

19 A. I believe I was sitting in there.

20 Q. Okay.

21 A. You would have to look in my memo
22 though.

23 Q. Okay. I'm just asking to the best of

1 your recollection, just -- just
2 sitting here thinking about the events
3 of that day. Ms. Jackson goes in your
4 office. Did she go in there with the
5 tape recording policy in her hand?

6 A. I think so.

7 Q. Okay. What did she say to you?

8 A. To the best of my recollection, you
9 would have to -- she didn't want to
10 sign it. And she said that she felt
11 like it was illegal and that she would
12 have to seek legal counsel in order
13 for her to sign that document.

14 Q. Okay. And what did you say to her at
15 that time?

16 A. I explained to her that -- I read it
17 to her, you know, in case she didn't
18 understand what it meant, and
19 explained to her by signing it you
20 didn't necessarily agree that you --
21 you know, necessarily agree with it,
22 but that you understood it, or
23 whatever that statement says at the

1 bottom, that you understand the
2 policy, that you have received and
3 understood it.

4 Q. Okay. And that's kind of different
5 from what the performance appraisal
6 says, that by signing it doesn't mean
7 that you agree with it; right?

8 A. I -- I think it's -- it's the same
9 statement.

10 Q. Okay. Take a look at Exhibit 6.

11 A. Okay.

12 Q. Exhibit 6 on the line where it says
13 appraisal signatures. (As read:)
14 Signatures denote supervisor and
15 employee discussion on the receipt of
16 form, not agreement; right?

17 A. Right.

18 Q. Okay. It doesn't say anywhere on the
19 policy on recording devices not
20 agreeing with it or that employee
21 doesn't --

22 A. Acknowledge that I've received and
23 understand it, that she comprehends

1 this policy.

2 Q. All right.

3 A. By her signature, it doesn't mean that
4 she necessarily has to agree with it.

5 Q. But it doesn't actually say that
6 anywhere on the document, does it?

7 A. No.

8 Q. What did you -- what was your response
9 when -- when she said that she didn't
10 think it was legal and she wanted to
11 communicate with her attorney?

12 A. I told her I needed to have it -- I
13 had set a deadline for turning it in
14 today because so many of those
15 policies were coming out. And this --
16 that was one of my -- you know, in
17 order to keep up, for me not to get
18 into trouble and miss my deadline to
19 turn them in, I wanted everybody --
20 which I signed them. Everybody in the
21 office signed them, and we got them
22 turned in. But LaShundra didn't want
23 to sign it, and I asked her repeatedly

1 to sign it, and she refused to sign
2 it. She didn't -- she didn't want to
3 sign it.

4 Q. Okay. And did you have that
5 conversation with her -- the whole
6 conversation that was in your office,
7 the initial conversation about it?

8 A. Yeah.

9 Q. Okay. So you asked her repeatedly to
10 sign it.

11 A. Uh-huh.

12 Q. Did you tell her that everybody was
13 going to have to sign one of those
14 policies?

15 A. Yes.

16 Q. Okay. And did you tell her that you
17 had already signed it?

18 A. Yeah.

19 Q. What was your deadline to get all the
20 policies back in?

21 A. I don't remember.

22 Q. If the letter says it was
23 January 16th, would you have any

1 reason to disagree with that?

2 A. No.

3 Q. Okay. Does that square with your
4 recollection that you had maybe
5 approximately two weeks and 11 days,
6 to get the policies back in?

7 A. I mean, we -- we didn't get all the
8 policies at the same time.

9 Q. No, no. I'm talking about the taping
10 policy. All the copies of the taping
11 policy had to --

12 A. If that's what the letter says, then
13 that's what it is.

14 Q. Okay. But Ms. Jackson had some
15 time -- or you had some time to get
16 those policies turned in; right? You
17 didn't have to get them turned in on
18 the very day that you got them in your
19 box; right?

20 A. Right.

21 Q. Did you raise your voice at
22 Ms. Jackson during that meeting that
23 morning?

1 A. I mean, my volume increased along with
2 hers.

3 Q. Did Ms. Jackson become upset during
4 the meeting?

5 A. Yes.

6 Q. Did she cry?

7 A. She may have. I can't remember
8 exactly.

9 Q. Would -- did she make any phone calls
10 during the meeting?

11 A. I think so.

12 Q. Who do you think she called?

13 A. I don't remember right now, but I
14 think I wrote it down in one of my
15 memos.

16 Q. Do you remember her asking to call her
17 attorney -- an attorney that she knew
18 during the meeting?

19 A. She may have.

20 Q. And do you remember her making that
21 call?

22 A. No, I don't remember. I'm just saying
23 that could be a possibility.

1 Q. Do you remember her receiving any
2 calls during that meeting?

3 A. I'd have to look back. I don't
4 recall. I believe -- I think she did.
5 I think she received a call from
6 somebody.

7 Q. Okay. Do you know who it was?

8 A. No.

9 Q. Okay. At the time that she received
10 the call --

11 A. I mean, I don't recall. At the time
12 she might have stated somebody's name
13 and I could have wrote that down, but,
14 you know, I don't -- I don't remember.

15 Q. Okay. You said you raised your voice
16 along with hers. Why did you -- why
17 did your tone get louder during that
18 meeting?

19 A. I think it's just -- you know -- you
20 know, she was hollering at me, so I
21 raised my voice in order for us to --
22 for her to hear me. You know, I mean,
23 there was so much -- I think it was

1 just a natural thing. I didn't -- you
2 know, I'm not saying I started
3 screaming at her. But I'm being
4 honest. My voice probably increased,
5 volume increased.

6 Q. Do you remember banging your hand on
7 the table when you were talking to
8 her?

9 A. No.

10 Q. How did you guys end the meeting?

11 A. She -- basically I told her that I
12 needed the policy signed and then
13 asked her repeatedly if she was going
14 to sign it, and she said no. And I
15 think she was on the phone -- and she
16 got on the phone. I don't know
17 whether she called somebody or
18 somebody called her, but she left the
19 office.

20 Q. She left the office? And was she in
21 tears when she left the office?

22 A. I'm not sure. I can't remember.

23 Q. Might she have been?

1 A. Yeah. It's possible.

2 Q. And about how long did that meeting
3 last?

4 A. Maybe 15 minutes, 10, 15 minutes.

5 Q. Was there anybody else present?

6 A. Josh McElhenney was present.

7 Q. Did he participate in the meeting?

8 A. No, I don't think he did.

9 Q. Okay. Do you recall him saying
10 anything during the meeting?

11 A. I don't recall.

12 Q. Do you recall whether he -- you could
13 tell whether he was paying attention
14 to what was going on during the
15 meeting?

16 A. No, I don't recall.

17 Q. You guys shared an office; right, you
18 and Josh?

19 A. Yeah. I mean, it -- it couldn't have
20 been that hard to -- to miss what was
21 going on, you know. But I don't
22 recall if he was necessarily paying
23 attention to it.

1 Q. And was the door open or closed during
2 the meeting?

3 A. I don't remember. I think -- I think
4 initially it was closed.

5 Q. When you say initially, do you think
6 at some point the door was open?

7 A. When LaShundra left, it was open.

8 Q. Did anybody ever come and tell you
9 that their work had been disrupted
10 because of that meeting?

11 A. Yeah. People were talking about it.
12 I mean, everybody -- it was a
13 disruption.

14 Q. Okay. Who -- who told you that their
15 work was disrupted?

16 A. I don't remember. It wasn't a big
17 official statement saying my work was
18 being disrupted. It was just kind of
19 the talk. You know, around the office
20 you've got 15 people trapped in a
21 trailer, you know, confined spaces.
22 And those walls are paper thin. You
23 can hear it, you know. And you can

1 hear somebody talking in an office
2 next to you. So when they were all in
3 there getting their reports downloaded
4 and everything from the next -- from
5 the previous day, you know, I could
6 tell it had become a distraction. You
7 know, it's not something that happens
8 every day.

9 Q. Sure. You and Ms. Jackson hollering
10 at each other was a distraction?

11 A. Well --

12 MR. REDD: Object to the form.
13 That's not what he
14 testified to.

15 A. I didn't say I was hollering at her.

16 Q. After Ms. Jackson left, where did she
17 go?

18 A. I didn't know at the time.

19 Q. Now do you know where she went?

20 A. I believe she went to Leon Malone's
21 office.

22 Q. Who is Mr. Malone?

23 A. He is an EEO officer.

1 Q. Okay. What makes you think that she
2 went to his office?

3 A. I believe she told Mr. Fresolone when
4 she showed up at his office that Leon
5 wasn't in yet. He didn't come in
6 until 8. And she bypassed his office
7 and went to Joey Fresolone's office.

8 Q. Okay. And who was Mr. Fresolone?

9 A. He was the construction -- division
10 construction assistant engineer, I
11 guess.

12 Q. And what makes you think that
13 Ms. Jackson told somebody that
14 Mr. Malone wasn't in, that he didn't
15 get there until 8, so she went to
16 Fresolone?

17 A. I think Joey told me.

18 Q. Okay. So you talked about that --

19 A. Yeah. We talked about it all day.

20 Q. You talked about that with
21 Mr. Fresolone?

22 A. We had meetings all day. We were tied
23 up all day.

1 Q. Okay. You were tied up in meetings
2 all day about Ms. Jackson?

3 A. Yes.

4 Q. And --

5 A. Well, now, we're to the point where
6 she's up there. I mean, I hadn't -- I
7 still don't know where she went.

8 Q. Okay. And she was supposed to take a
9 concrete class or something that day;
10 right?

11 A. I think so.

12 Q. Okay. Do you know if she made it to
13 the class on time?

14 A. I think she might have been a little
15 late.

16 Q. What makes you think that?

17 A. I just have that -- I don't know. I
18 think --

19 Q. Did you ever look at the sign-in
20 sheet?

21 A. No, no.

22 Q. Did anybody ever tell you she was
23 late?

1 A. No.

2 Q. That's just something that you think
3 in your mind?

4 A. Well, I thought that she was up there,
5 because when I called Joey's -- Joey
6 called me and wanted me to come up to
7 the office to talk about this. And he
8 instructed me that LaShundra had just
9 left to go to her concrete class, and,
10 you know, I felt like it was after the
11 point in time or it was close to the
12 start of the class. That's why I say
13 she might have been a little late.

14 Q. And the class had a registration
15 period before the class was actually
16 supposed to start; right?

17 A. If you say so.

18 Q. Do most classes normally have a
19 registration period?

20 A. I think so. I think they do.

21 Q. And do you have to be there for the
22 whole duration of the registration
23 period?

1 A. (Shakes head.)

2 Q. You just have to get there before the
3 class actually starts; right?

4 A. Yes.

5 Q. And do you know what time that class
6 actually started?

7 (Off-the-Record discussion.)

8 A. No.

9 Q. If there was testimony that
10 Ms. Jackson made it there before the
11 class started, would you have any
12 reason to actually dispute that?

13 A. No.

14 Q. Did Ms. Jackson do the wrong thing by
15 going and talking to Mr. Malone and
16 Mr. Fresolone?

17 A. I think she could have told me where
18 she was going. I mean, you know, when
19 somebody just walks out like that --
20 and I think I even wrote it in -- you
21 know, in a letter about leaving the
22 work station and not letting your
23 direct supervisor know where you're

1 going.

2 No, it's not wrong to go
3 talk to Leon Malone or Joey Fresolone,
4 but the way she went about it, yes.

5 Q. And what you have -- what you take
6 issue with is that she didn't tell you
7 where she was going?

8 A. Yes.

9 Q. Did you try to contact her to find out
10 where she had gone?

11 A. I might have tried to call her, I
12 think.

13 Q. Okay. And did you call her with the
14 purpose of trying to figure out where
15 she was?

16 A. Yes.

17 Q. Okay. You knew she was supposed to go
18 to the concrete class that morning;
19 right?

20 A. Yeah. I mean, I had her training
21 schedule, but that -- that might not
22 have been on my mind right at that
23 second. But I knew at some point she

1 had the concrete class.

2 Q. Okay. Where should she have gone when
3 she left your office?

4 A. I don't know. I'm not saying where
5 she should have gone. Where she
6 should -- she should have gone to the
7 concrete class, but I just have a
8 problem with the way she left, you
9 know, and I didn't know -- because I
10 believe when she left, it was maybe --
11 those classes usually don't start
12 until 8 or 8:30, and I believe when
13 she left, it was around, say, 7:30, so
14 I had no clue where she went.

15 Q. Did you usually know of her
16 whereabouts during the day?

17 A. Yes. I knew what job she was on.

18 Q. Okay. And what -- do you remember if
19 there was a job that she was supposed
20 to be on that day apart from the
21 training class?

22 A. I don't remember.

23 Q. And I think you testified earlier that

1 she might have been crying when she
2 left your office; is that right?

3 A. I said it's a possibility.

4 Q. Yeah. If she had questions about the
5 policy and if she thought that she
6 needed some clarification that you
7 hadn't been able to give her, who is
8 the person that she should have gone
9 to, to see about that?

10 A. Maybe Jay Palmer, my -- my supervisor.

11 Q. And you testified a minute ago that
12 you didn't think that there was
13 anything wrong with her going to see
14 Malone or Fresolone; is that right?

15 A. That's right.

16 Q. Okay. So those are also people that
17 she could go and talk to when she had
18 concerns?

19 A. Yeah. I don't have a problem with
20 that. That -- that's no problem.

21 Q. Okay. So really the only problem you
22 have about her leaving is how she went
23 about telling you?

1 A. Yeah.

2 Q. And after Ms. Jackson went to her
3 class, you spoke with Mr. Fresolone;
4 correct?

5 A. Yes.

6 Q. Okay. Did he call you?

7 A. Yes.

8 Q. Okay. What did he say on the phone
9 call?

10 A. He said he wanted to meet with me
11 about the events that took place that
12 morning, that he had just gotten
13 through talking with LaShundra.

14 Q. Okay. And did you go up there and
15 meet with him?

16 A. Uh-huh.

17 Q. How many people were in the office?

18 A. I don't recall right offhand. I want
19 to say -- it was a lot of people
20 involved that day. But that morning,
21 the first thing was me and Joey and
22 maybe Charly Jones.

23 Q. Okay. And Mr. Jones had gone in the

1 office with Ms. Jackson; right?

2 A. I think so. I mean, later -- I found
3 that out later. I think they were in
4 there.

5 Q. Let me show you what I've marked as
6 Exhibit 8 to your deposition. Do you
7 recognize that document?

8 (The referred-to document was
9 marked for identification
10 as Plaintiff's Exhibit No. 8.)

11 A. Yes.

12 Q. Is this one of the documents in your
13 file about Ms. Jackson?

14 MR. REDD: In his file?

15 A. No. It wouldn't have been in mine.
16 This is a memo from Charly Jones.
17 It's a memo to file.

18 Q. Okay. So you didn't collect memos
19 from other people about this incident?

20 A. Right.

21 Q. You just had what you wrote up about
22 it?

23 A. Well, I had it -- I had that.

1 Q. Okay. Look at Mr. Jones' memo. It
2 says (as read:) When she came into the
3 building, she was very upset and in
4 tears, so I followed her into Joey's
5 office where she started explaining
6 that she was being treated unfairly.

7 Do you see that?

8 A. Yes.

9 Q. Okay. So by the time she got to
10 Mr. Fresolone's office, or by the time
11 she got to the building where his
12 office was, she was in tears; is that
13 right?

14 MR. REDD: Object to the form.

15 He doesn't know that from
16 personal knowledge.

17 Q. Is that right?

18 A. Well, I mean, going off of -- I don't
19 know that a hundred percent. But
20 going off of this -- that's what this
21 memo states, that when Charly Jones
22 saw her in the office, she was crying.

23 Q. Okay. And do you know how -- do you

1 know from your own personal knowledge
2 how Charly Jones got involved in this
3 whole situation?

4 A. No.

5 Q. Did anybody ever ask you that?

6 A. No.

7 Q. So you went to meet with Mr. Fresolone
8 and with Charly Jones; right?

9 A. Yes. I'm pretty sure. You would have
10 to look back through my memo, but I
11 believe he was in there.

12 Q. And what did y'all talk about during
13 that meeting?

14 A. The events that took place that
15 morning.

16 Q. Okay. What did Mr. Fresolone ask you
17 about?

18 A. He asked me what had happened.

19 Q. And you told him --

20 A. Basically what I just told you.

21 Q. Okay. How long did that meeting with
22 Mr. Fresolone last?

23 A. I don't recall.

1 Q. Was it more than an hour?

2 A. Yeah, essentially.

3 Q. Did you document that meeting with
4 Mr. Fresolone?

5 A. Yeah, I believe I did.

6 Q. When you were done meeting with -- did
7 you mention to Mr. Fresolone during
8 that meeting that you had raised your
9 voice at Ms. Jackson?

10 A. Yes.

11 Q. And did Mr. Fresolone say that that
12 was inappropriate?

13 A. Yes. I mean, that's just a natural
14 reaction. I mean, I just wanted to
15 increase the volume of my voice. I
16 was not screaming at her or hollering
17 at her or banging my fist on the
18 table. I mean, I probably shouldn't
19 have done it, but it probably -- I'll
20 be honest with you, it probably
21 happened.

22 Q. And Fresolone told you not to let that
23 happen again, didn't he?

1 A. Yes.

2 Q. He didn't write you up for it though,
3 did he?

4 A. As far as I know, he didn't.

5 Q. Okay. Do you know if he -- if he ever
6 gave you -- gave a documentation on
7 that?

8 A. I think he just gave me a verbal
9 warning on it.

10 Q. Okay. So after you met with
11 Mr. Fresolone, what was the next thing
12 during the course of that day that
13 happened as far as the taping policy
14 that Ms. Jackson did not want to sign?

15 A. I think I went back to the office, and
16 I know we met again that afternoon.

17 Q. Is that the meeting where she signed
18 the policy?

19 A. Yes.

20 Q. Did you do anything with respect to
21 the taping policy between the time
22 that that meeting with Mr. Fresolone
23 ended and when you met again with

1 Ms. Jackson that afternoon?

2 A. Did I do anything with it?

3 Q. Yeah. I mean, did you look up
4 anything or talk to anybody about it?

5 A. Not that I know of.

6 Q. Okay.

7 A. Not that I recall.

8 Q. Okay. So you went about your regular
9 other work duties for the rest of the
10 day?

11 A. No. I mean, I came back and was
12 writing memos and -- I'm not sure if
13 we had another meeting with -- with
14 someone else. I would just have to
15 look at my letter, but it took up a
16 lot of time that day.

17 Q. Okay. And part of the time that was
18 taken up was from you having to write
19 memos documenting what had happened?

20 A. Yes, yes.

21 Q. Okay. Had anybody instructed you to
22 do that?

23 A. No. That was just from my -- I mean,

1 that was just something that I needed
2 to do, because it was getting hard to
3 remember.

4 Q. Okay.

5 A. So I mean, they said, you know, when
6 you come in as being a project
7 engineer, it's good to take good notes
8 and have something to go back to.

9 Q. And so the last -- the last meeting
10 that day was again in Mr. Fresolone's
11 office; right?

12 A. Yes.

13 Q. Okay. And that was you and
14 Mr. Fresolone, Ms. Jackson and, I
15 guess, Gwenda Hunter was in there too;
16 is that right?

17 A. And Leon Malone.

18 Q. Mr. Malone was in there too. And at
19 the end of that meeting, she signed
20 the policy; right?

21 A. Yes.

22 Q. Okay. So she did sign it by the
23 deadline that you --

1 A. She did sign it.

2 Q. She signed it by the deadline you gave
3 her; right?

4 A. Yes.

5 Q. What was the discussion like in that
6 final meeting?

7 A. I don't recall. I know she was upset,
8 I think, and she had Gwenda in there
9 with her as a witness, I believe. I
10 remember it got pretty heated between
11 her and Leon Malone. I would have to
12 go back and look at my file.

13 Q. Okay. Did Ms. Jackson -- during that
14 meeting, did she say she thought you
15 were discriminating against her
16 because she was a woman?

17 A. I think -- I think she did. I think
18 she -- not necessarily those words,
19 but maybe that I was discriminating
20 against her, didn't like her, wanted
21 her fired or something.

22 Q. Okay. If she had said or if there was
23 testimony that she had said that she

1 felt you were discriminating against
2 her because she was female, would you
3 have any reason to dispute that?

4 MR. REDD: Object to the form.

5 Q. You can answer.

6 A. What's that?

7 Q. I asked you if there was testimony
8 that she said during that final
9 meeting --

10 A. That somebody said that she said that
11 in that meeting?

12 Q. Yeah, yeah. That --

13 A. No, I mean, I wouldn't --

14 Q. You wouldn't dispute that; right?

15 A. No.

16 Q. After that last meeting where she
17 signed the policy, what was the next
18 action that you took with respect to
19 Ms. Jackson not signing the policy?

20 A. I think I wrote her a reprimand for
21 her demeanor that day and in the
22 office and the whole process it took
23 in order for her to sign that

1 document.

2 Q. Did you discuss with anybody that you
3 were going to give her a written
4 reprimand?

5 A. Yes.

6 Q. Who did you discuss that with?

7 A. My supervisor and Joe Fresolone.

8 Q. Both of them?

9 A. Yeah.

10 Q. Okay. Did either of them instruct you
11 to give her the reprimand?

12 A. Yes.

13 Q. Who instructed you to give her the
14 reprimand?

15 A. I don't recall exactly who. So many
16 people were involved at this point in
17 time.

18 Q. Okay. But it was either Fresolone
19 or --

20 A. I was meeting with them a lot, but I
21 don't remember who exactly said it.

22 Q. Okay. But it was either -- you think
23 it was either Fresolone or Palmer who

1 told you to give her the reprimand?

2 A. I think so. I'm not a hundred percent
3 sure though.

4 Q. You say you were meeting with them a
5 lot. How many times would you say you
6 met with them about Ms. Jackson and
7 the policy?

8 A. I can't recall.

9 Q. Okay. And it took you about two weeks
10 before she actually got the writeup;
11 right?

12 A. Yeah. It took a while. A lot of
13 people were talking about the events
14 that happened that day and, you know,
15 what course of action would be best to
16 take on this. And, you know,
17 everybody from -- I spoke to everybody
18 from Mr. Poiroux to Jay Palmer.

19 Q. Okay. You spent a good bit of time
20 doing that?

21 A. Yes.

22 Q. Okay. And who was instructing you on
23 who to talk to and what to do as far

1 as gathering the stuff up for the
2 reprimand?

3 A. I was -- I was submitting -- I was --
4 we would meet and discuss what took
5 place and who was involved at this
6 meeting or who was involved in this
7 meeting, you know, what all -- just
8 gathering of the facts, what -- what
9 happened.

10 Q. Okay. And who was kind of leading
11 that process of gathering the facts?

12 A. I'm not sure who exactly, but it was
13 either Jay or Joey or Vince Calametti
14 or Mr. Poiroux. I'm not sure.

15 Q. Okay. And was it your job in that
16 whole deal to kind of be the person
17 who collected the statements and
18 gathered the facts?

19 A. No.

20 Q. Okay. What was your role in gathering
21 the facts?

22 A. I just presented, I guess, my memos to
23 file on what had happened and met

1 about it and talked about it.

2 Q. Okay. And again, you said it was
3 either Fresolone, Palmer --

4 A. I said I didn't recall, but it could
5 possibly be anybody, Jay Palmer, Joey
6 Fresolone, Vince, Ronnie Poiroux. I'm
7 not --

8 Q. Okay. And when was the decision made
9 to actually give her the written
10 reprimand?

11 A. I don't recall.

12 Q. Okay. And --

13 A. Probably around the time she got it,
14 or the day before.

15 Q. And you just had to make sure that you
16 had all the support?

17 A. And I just carried out the official
18 reprimand letter.

19 Q. Did you write the official reprimand
20 letter?

21 A. Yeah.

22 Q. You wrote it because you were
23 instructed to do that by either

1 Calametti, Fresolone, Palmer, or
2 Poiroux; is that right?

3 A. (Nods head.)

4 Q. Yes?

5 A. Yes.

6 Q. And who -- who was the principal
7 person whose job it was to collect all
8 of the supporting documentation for
9 the reprimand?

10 A. I don't know who -- if that's even an
11 official job or not.

12 Q. Okay. But you did have to -- but
13 somebody had to get all of the
14 supporting documentation in place so
15 that the reprimand could be given;
16 right?

17 A. Yes.

18 Q. Okay.

19 A. I believe somebody did do that, either
20 Jeanette Brown or Jay Palmer.

21 Q. Okay. And you have to have all those
22 written memos and everything to
23 support the written reprimand; right?

1 A. Yeah. As far as I know. I mean,
2 that's -- that's what I was doing, you
3 know, giving everything I had on the
4 subject.

5 Q. And did you agree that the written
6 reprimand was what Ms. Jackson should
7 get for that particular incident?

8 A. I felt that it was -- it was accurate,
9 yes.

10 Q. Okay. You felt that was the
11 appropriate level of discipline?

12 A. Appropriate. That's the word I --

13 Q. Appropriate level of discipline?

14 A. Yes, sir.

15 Q. Taking into account all the level of
16 conduct and all that had occurred that
17 day?

18 A. Taking into account that day and, you
19 know, between all the whole process to
20 get her to sign that document. And
21 also I think I even mentioned her
22 leaving the office that morning, you
23 know, without -- without letting me

1 know where she was going. All of that
2 taken into account that day, I
3 believe, was inappropriate.

4 Q. All right. Do you think that her
5 previous complaints with regard to the
6 vandalism of the car -- do you think
7 if she -- if that hadn't happened, do
8 you think that she still would have
9 gotten the reprimand for the
10 January 5th incident?

11 MR. REDD: Object to the form.

12 A. I couldn't -- I don't know.

13 Q. Do you know if -- if whoever
14 instructed you to give her the written
15 reprimand, do you know if they took
16 that into account when they instructed
17 you to give it to her?

18 A. No, I don't know that. Well, it is --
19 no, I mean, I don't know. I couldn't
20 say.

21 Q. And she was still working under you
22 when she got the reprimand; right?

23 A. I believe so.

1 Q. Okay. And do you think that was
2 around the time when she started doing
3 office work instead of working
4 outside?

5 A. Yeah, around that time.

6 Q. And let me just understand again. Did
7 she -- did she start doing the inside
8 work because of the doctor's note that
9 restricted her to inside work? Was
10 that the reason for it?

11 A. No. She was -- I think there was two
12 letters, two doctor's letters. The
13 first one came out and said no heavy
14 lifting. And I said no problem, you
15 know. You don't -- you can do office
16 work, and when you're in the field,
17 don't lift anything heavy. And then I
18 believe Vince Calametti wanted a
19 clarification on that. You know, a
20 week or so later, or however long
21 whenever he got the note, he wanted a
22 weight limit. You know, what is heavy
23 lifting, because heavy lifting to me

1 might not be the same to you. And
2 that's when the second note came out
3 and stated office work only, if I'm
4 not mistaken.

5 Q. Okay. And when the second note came
6 out, is that when you decided to bring
7 her inside and not assign her outside
8 anymore?

9 A. Yes.

10 Q. When did you talk to Vince Calametti
11 about that first note?

12 A. I don't remember.

13 Q. Okay.

14 A. Sometime shortly after I received it.

15 Q. Did you bring the note to him?

16 A. Yeah.

17 Q. You did?

18 A. Yeah.

19 Q. Okay. And so you had that --

20 A. A copy of it or the note, yeah.

21 Q. Okay. And you had a conversation
22 about it with him in his office?

23 A. I believe I talked to Jay Palmer about

1 it first, and then we went to Vince's
2 office.

3 Q. Okay. So you all went together. And
4 what was the conversation that you had
5 with Jay Palmer? How did that go?

6 A. You know, basically what does that
7 mean, you know. He -- he wanted to
8 know what -- what Vince thought about
9 it. So we went over there, and that's
10 when Vince wanted clarification.

11 Q. Okay. Did he want just a -- just a
12 weight limit? Is that what he wanted
13 or --

14 A. I just used that as an example. I
15 don't know exactly what he wanted, but
16 he wanted something, you know, that --
17 no heavy lifting is so gray that he
18 wanted to know what she could and
19 couldn't do.

20 Q. Okay. And who communicated back to
21 Ms. Jackson that that was needed?

22 A. He may have or I may have. I'm not
23 sure.

1 Q. Okay. And then she got -- and that
2 was the second doctor's note that just
3 said no outside work?

4 A. Yes.

5 Q. Did that answer your -- did that
6 answer his question as to what was the
7 lifting restriction?

8 A. Yes.

9 Q. It did?

10 A. He felt satisfied with that, yes.

11 Q. I mean, there's some possibly heavy
12 lifting that a person could do even
13 working inside; right?

14 A. Well, I think, you know, you'd have
15 to -- I believe that was right around
16 the time that she was transferred to
17 Tony, and he may have had -- might
18 have had some conversations with him
19 directly on what she could and
20 couldn't lift and all. But nobody was
21 going to require her to lift anything
22 in the office. Now, whether she chose
23 to or not, that's up to LaShundra.

1 Q. Okay. Is there a lot of heavy lifting
2 done out on the inspection sites?

3 A. No.

4 Q. Do you think even with the lifting
5 restriction, a project inspector
6 can -- can still work out on the job
7 site?

8 A. I believe so.

9 Q. Was -- Mr. Calametti, was he -- was
10 he -- did he seem frustrated at all
11 that she was having these restrictions
12 put on her?

13 A. No.

14 Q. He was just trying to work with her to
15 do exactly what the doctor was saying?

16 A. Yes.

17 Q. Okay.

18 A. And at the time I think one of the
19 main reasons she went to Tony's office
20 was because he had more office work
21 for her to do.

22 MR. SIMON: All right. Why
23 don't we take a quick

1 break?

2 (Brief recess was taken.)

3 Q. (By Mr. Simon:) When Ms. Jackson
4 brought you that first note, the
5 no-heavy-lifting note, did you have
6 any conversation with her about what
7 job duties she could or couldn't do?

8 A. I think briefly I discussed with her,
9 you know, use your best judgment. And
10 if you don't feel like you can lift
11 something, don't lift it. You know,
12 I'm not going to hold you responsible
13 or any kind of -- take disciplinary
14 action over something like that. I
15 mean, that's ridiculous. I mean, I
16 just told her to -- to use her best
17 judgment. If she couldn't lift
18 something, get somebody to lift it for
19 her --

20 Q. Uh-huh.

21 A. -- which you don't encounter much,
22 like I said earlier. I mean, that's
23 not a common thing. But then you get

1 into the kind of gray area, it's just
2 something might be heavy to her might
3 not be heavy to me. So I just told
4 her to use her best judgment.

5 Q. Okay. And I think we said earlier
6 that typically the guys will carry the
7 heavy stuff anyway?

8 A. Yes.

9 Q. When she brought you that second
10 note that restricted her to inside
11 duties --

12 A. You know, I can't remember if she
13 brought that to me or not, but I know
14 that -- that Vince did ask for
15 clarification, and he did receive
16 clarification on it. And I'm not sure
17 what -- you know, through what means
18 how he received that note, but he did
19 receive it.

20 Q. And did she give you a copy of that
21 note too?

22 A. I think I saw it. I think we had
23 another meeting on it, and we might

1 have discussed that.

2 Q. And basically what was your discussion
3 on that?

4 A. Basically informed me that she was,
5 you know, confined to the office, that
6 she needed to do office work. And
7 that's when we got into the discussion
8 about how much office work I had at
9 the time, and maybe Tony Cooper would
10 have been a better fit to accommodate
11 that.

12 Q. Okay. Did you say you got into a
13 discussion about that?

14 A. (Nods head.)

15 Q. How did the discussion start?

16 A. You know, if she was going to be
17 limited to office work, would I have
18 enough office work to keep her busy
19 every day, all day, I think.
20 Something to that effect.

21 Q. Okay. And was that a question from
22 her to you, or was she --

23 A. No. She wasn't involved in that.

1 Q. Oh, okay. This was a conversation
2 that you had with somebody other than
3 Ms. Jackson?

4 A. Vince.

5 Q. Okay. So you and Mr. Calametti were
6 talking about whether she could be in
7 the office -- about whether you had
8 enough office work for her?

9 A. Well, yes, yes. I think me and Jay
10 and Vince discussed that.

11 Q. Okay. And did you guys reach a
12 decision during that conversation
13 about what was going to happen?

14 A. I think I could keep her busy checking
15 field books, as much stuff as I could
16 come up with, plotting. You know, in
17 the meantime I think they were
18 deciding, you know, who would -- you
19 know, Tony Cooper would be a better
20 fit, you know, and the process that it
21 takes to transfer somebody to Tony
22 Cooper.

23 Q. Okay. By the end of the meeting was

1 it decided that she was going to be
2 transferred?

3 A. No, no. There was just -- that was on
4 the table, you know. In the meantime
5 I would try to, you know, carry on
6 like normal. I mean, I would
7 accommodate that doctor's note.

8 Q. Okay. How long after you had that
9 meeting with Calametti and Palmer was
10 it decided that she was going to be
11 transferred to Tony Cooper?

12 A. I don't remember. A couple weeks, a
13 few weeks. I don't remember off the
14 top of my head.

15 Q. Okay. And did you ever have any
16 meetings with Ms. Jackson about her
17 inside duties?

18 A. I don't think we had anything
19 official, but, you know, let's sit
20 down and talk about it. I would just
21 try to keep her busy in the office,
22 you know.

23 Q. Okay. And which --

1 A. And also, even I think she was helping
2 out on another job, helping Adam.
3 Because sometimes -- me and Josh
4 McElhenney's office worked pretty
5 close together. And sometimes the
6 PCETs which were part-time, they would
7 be in and out of class at school
8 there. They were in school half of
9 the time.

10 Q. Uh-huh.

11 A. And they would come in and do some
12 plotting. It was hard for them, once
13 they got to the office to go out
14 there. By the time they got there,
15 they would have to come back and go
16 back to school, and so they stayed
17 somewhat in the office the majority of
18 the time. And they did a lot of
19 plotting, and that was one of the ones
20 I talked to you earlier about, Adam
21 Spence, who was doing some plotting
22 for Josh, I believe, and she helped
23 out with that.

1 Q. Okay. Did you ever tell Ms. Jackson
2 that she wouldn't move forward at
3 ALDOT in her condition?

4 (Off-the-Record discussion.)

5 A. No.

6 Q. Did you ever make any comments to her
7 about her chances for progress, her
8 being pregnant?

9 A. No.

10 Q. If she testifies that you did make a
11 comment like that, then that would
12 just be untrue?

13 A. Yes. That would be a lie.

14 Q. When she was transferred to Tony
15 Cooper, were you aware of anybody
16 having made a decision to recommend
17 her for termination?

18 A. I don't recall.

19 Q. When did you first become aware that
20 someone had recommended that she be
21 terminated?

22 A. I don't remember.

23 Q. How did you become aware of that?

1 A. Maybe in a meeting of some sort, I'm
2 sure. Maybe talking with Tony. Maybe
3 he talked about it.

4 Q. Tony Cooper told you she was being
5 terminated?

6 A. Yes.

7 Q. Were you surprised to hear that when
8 he told you that?

9 A. No, I wasn't surprised.

10 Q. Why not?

11 A. Because after all the chain of events
12 that took place in six months, I mean,
13 I wasn't surprised at that.

14 Q. Okay. She hadn't done anything wrong
15 though after January 5th, had she?

16 A. Not to my knowledge.

17 Q. So even after a month and a half had
18 gone by with no problems, you still
19 thought it was reasonable to terminate
20 her?

21 A. Yes.

22 Q. Okay. But again, you didn't recommend
23 to anybody that she be terminated?

1 A. No.

2 Q. Were you ever in any meetings with
3 Mr. Poiroux or Mr. Calametti or
4 Mr. Palmer where they were discussing
5 the possibility of terminating
6 Ms. Jackson?

7 A. I don't -- I don't think I was with
8 them. At that point in time she --
9 she was already in Tony Cooper's
10 office, so, you know, I had stuff to
11 do. I had work, you know, so I kind
12 of lost contact at that point.

13 Q. Okay. Did y'all have meetings, the
14 project engineers and the management,
15 about where you talked about how the
16 inspectors were doing?

17 A. No. I wouldn't ever meet with
18 another -- any of the project engineer
19 meetings to discuss, you know, say, an
20 EA-1, their performance in my office.

21 Q. Okay. Do you know whether --

22 A. I mean, that was something between me
23 and, say, my direct supervisor.

1 Q. Do you know if Ms. Jackson got any
2 more performance appraisals after the
3 one that you gave her in September?

4 A. I'm not aware.

5 Q. Okay. Did anybody ever consult with
6 you about how her performance was from
7 the last performance appraisal that
8 you gave her until the time of her
9 termination?

10 A. What?

11 Q. Did anyone ever consult with you about
12 the quality of Ms. Jackson's job
13 performance when you supervised -- I'm
14 sorry. Let me ask it in a little bit
15 different way. Did anybody -- first,
16 are you aware of anybody doing a
17 performance review for Ms. Jackson --
18 a performance appraisal for
19 Ms. Jackson after the one you did in
20 December?

21 A. No.

22 Q. Okay. We'll call that one the
23 December performance appraisal, okay?

1 A. Okay.

2 Q. After you gave her the December
3 performance appraisal, did anyone ever
4 come to you and ask you how her
5 performance was for the purpose of
6 doing another performance appraisal
7 for her?

8 A. For that purpose?

9 Q. Yeah.

10 A. No.

11 Q. Okay. Did anyone ever come to you and
12 ask you how her job performance was
13 after you did that performance
14 appraisal in December?

15 A. Well, I believe -- I mean, going off
16 of that performance appraisal along
17 with when she transferred to Tony
18 Cooper, you know, we had a brief
19 discussion about where she was at on
20 different levels, you know, on
21 different duties, and he kind of took
22 it from there.

23 Q. Okay. Were those conversations that

1 you had with Tony Cooper?

2 A. Yes.

3 Q. Okay. Did -- so did Mr. Poiroux ever
4 come to you and say, hey, how's --
5 how's LaShundra Jackson's job
6 performance?

7 A. No -- at what point in time?

8 Q. After you did the December 20th
9 appraisal.

10 A. No.

11 Q. Did Vince Calametti ever come to you
12 and say, hey, how's Ms. Jackson's
13 performance after you did the December
14 performance appraisal?

15 A. I don't recall. I'm not sure.

16 Q. Okay.

17 A. And -- and I've said all along, you
18 know, that her job performance wasn't
19 the issue. I mean, I think she did a
20 decent job here. It was -- you know,
21 the outburst and she would get upset
22 about all these different things that
23 we've been talking about here today,

1 and that was mainly my main -- what I
2 documented, you know.

3 Q. Right. I understand that. Did Samuel
4 Palmer ever come to you and ask you
5 how was her job performance after that
6 December 20th appraisal?

7 A. He -- he may have. I don't recall.

8 Q. Okay. Do you ever recall telling
9 anybody -- do you recall ever telling
10 Mr. Palmer, Mr. Calametti, or
11 Mr. Poiroux that any of Ms. Jackson's
12 task responsibilities, that she was
13 doing them in such a way that was
14 substandard?

15 A. Do I recall telling them that --

16 Q. Yeah.

17 A. -- that she was doing her duties
18 substandard?

19 Q. Yes.

20 A. I don't recall that.

21 Q. When -- did you ever have any other
22 probationary engineering assistants
23 working under you?

1 A. I don't think so.

2 Q. Okay. Did Lisa Champagne work under
3 you?

4 A. Yes, she was one.

5 Q. Okay. Was she a probationary?

6 A. Yes.

7 Q. Okay. Did she make permanent status
8 while she was under your supervision?

9 A. I believe she did.

10 Q. Okay. Do you know if she passed the
11 algebra and the basic math before she
12 did?

13 A. Yes.

14 Q. Okay.

15 A. I was just trying to think of when she
16 started and if I was gone, but I think
17 I was still here when she received
18 her -- I'm pretty sure.

19 Q. What makes you think that --

20 A. I kind of remember her doing the
21 performance thing.

22 Q. What makes you think that she passed
23 the basic math and algebra?

1 A. I think -- usually how that deal works
2 is you get an e-mail from Debra
3 Hadley, from the training coordinator
4 here.

5 (Off-the-Record discussion.)

6 Q. Do you remember getting that e-mail
7 from Debra Hadley about Ms. Champagne?

8 A. I think so.

9 Q. And to your recollection, did
10 Ms. Champagne pass basic math and
11 algebra when she was first hired or
12 did she pass it later on?

13 A. No. I think she had to take it later
14 on.

15 Q. Okay.

16 A. She might have passed one and not the
17 other. I'm not sure. She might have
18 passed basic math and had to take
19 algebra. I know she had to take some
20 math classes.

21 Q. So you're not aware that Ms. Jackson
22 got a review that said she partially
23 met standards after the December 20th

1 review that you gave her?

2 A. No.

3 (Off-the-Record discussion.)

4 Q. And are you aware that Ms. Jackson
5 received work habit ratings that said
6 that she was unsatisfactory in
7 cooperation with co-workers and
8 compliance with rules?

9 A. Would that be in the review that you
10 just asked me if I remember?

11 Q. Yeah.

12 A. No.

13 Q. Let me show you what -- what I've
14 marked as Exhibit 9 to your
15 deposition.

16 (The referred-to document was
17 marked for identification
18 as Plaintiff's Exhibit No. 9.)

19 MR. SIMON: I don't have
20 another copy of that.

21 MR. REDD: That's okay. I'll
22 look on.

23 Q. (By Mr. Simon:) Take a look at this.

1 Do you recognize --

2 A. I think I --

3 Q. Do you recognize this document?

4 A. Yeah, I recognize it.

5 Q. You do?

6 A. (Nods head.)

7 Q. What is it?

8 A. It's another performance appraisal.

9 (Off-the-Record discussion.)

10 Q. Another performance appraisal?

11 A. (Nods head.)

12 Q. And what's the date on it?

13 A. March -- no. That's the --

14 February 23rd.

15 Q. Okay. Have you ever seen this
16 document before?

17 A. Yeah, I have. I don't remember it,
18 but I've obviously seen it. I
19 initialed it.

20 Q. Where did you initial it?

21 A. Under the ratings supervisor.

22 Q. Okay. The signature on there is
23 Samuel Palmer; right?

1 A. That's correct.

2 Q. Okay. And there's -- I think I see
3 your initials, BP; correct?

4 A. That's correct.

5 Q. And there's something above that. Do
6 you know what that is?

7 A. That's Vince Calametti.

8 Q. Because Vice Calametti signed off as
9 Ms. Jackson's rating supervisor as
10 well?

11 A. I think we initialed -- I think Jay
12 Palmer signed it as the rating
13 supervisor.

14 Q. And you and Vince Calametti signed off
15 under the ratings supervisor also?

16 A. Yes.

17 Q. What does that mean putting your
18 initials there?

19 A. I'm not sure. I don't recall what --
20 why we initialed that.

21 Q. Okay. Looking at this now, did --

22 A. I take it that this takes into account
23 the reprimand that came after the --

1 you stated a while ago that nothing
2 had happened since the first
3 performance appraisal, which that
4 reprimand was between the performance
5 appraisal of December, if that's what
6 you're talking about, and February.
7 And this takes that into account.

8 When I was a part of
9 that, they wanted me to review this
10 and initial off on it --

11 Q. Okay.

12 A. -- since I was involved at that point.
13 I currently wasn't her direct
14 supervisor, but I was involved through
15 the whole reprimand process.

16 Q. Okay. Did you -- did you provide any
17 input on the numerical scores that she
18 was given on her performance?

19 A. No, sir. I don't believe I did.

20 Q. When you initialed this document, did
21 you know what her final score was
22 going to be?

23 A. I may have. I don't recall. I was

1 just involved -- do you see under this
2 disciplinary section -- that
3 reprimand?

4 Q. Okay. Do you remember where you were
5 when you signed this document?

6 A. I think I was in Jay's office.

7 Q. And at the time that you signed it,
8 did you know that Ms. Jackson was
9 going to be terminated?

10 A. I don't recall if I did or not.

11 Q. What did you go to Jay's office for
12 when you were in there? Was it just
13 to sign this document?

14 A. I think he called me up there, yeah,
15 to talk about, you know, the
16 reprimands and to go over that.

17 Q. Okay. She had -- she had already been
18 given the reprimand about a month
19 before; right?

20 A. Yeah.

21 Q. And he was -- he was involved in the
22 process of that reprimand; right?

23 A. Yeah.

1 Q. Okay. So he called you up to his
2 office to talk to you again about the
3 reprimand?

4 A. Something to that effect.

5 Q. Okay. And I'm not trying to be
6 melodramatic, but it seems like that
7 was pretty much done to death at that
8 point.

9 A. (Nods head.)

10 Q. Was he -- did he ask you any
11 questions?

12 A. I don't -- I don't remember.

13 Q. Did --

14 A. I mean, yes, I'm sure he did. But
15 what questions? I don't -- I don't
16 have a clue.

17 Q. At the time that you initialed this
18 document, did it already have the X in
19 the space that says (as read:)
20 Separated before or at the end of the
21 probationary period?

22 A. I don't remember if it did or not.

23 (Off-the-Record discussion.)

1 Q. And that one has McInnes' signature on
2 it; right?

3 A. Yes.

4 Q. Okay. And let me show you what I have
5 marked as Exhibit 10 to your
6 deposition. It's another copy of that
7 without McInnes' signature; right?

8 (The referred-to document was
9 marked for identification
10 as Plaintiff's Exhibit No. 10.)

11 A. Uh-huh.

12 Q. And it looks like even before
13 Mr. McInnes signed it, that X is still
14 on that line for separated before and
15 after; right?

16 A. Right.

17 Q. Okay. Does that --

18 A. Do you need this back?

19 Q. No. Hold onto that. Does that help
20 you remember whether that X was on
21 there at the time you initialed it
22 when you were with Mr. Palmer?

23 A. No, I don't remember.

1 Q. Did Mr. Palmer tell you during that
2 meeting where you put your initials on
3 this that he was considering
4 terminating Ms. Jackson?

5 A. Yeah. I think I knew at this point,
6 through conversations with Tony or
7 through Jay, that -- that they were
8 going -- decided that course of
9 action.

10 Q. Okay. So you -- you basically knew
11 you were initialing something that was
12 going to be given to her in support of
13 her termination?

14 A. Yes, basically, I mean.

15 Q. When -- before you initialed it, did
16 you review the numerical ratings
17 scores?

18 A. No.

19 Q. Okay. So you didn't look to see how
20 she had been rated during this time
21 period?

22 A. No. I didn't -- I didn't -- I don't
23 recall. I'm not going to say I a

1 hundred percent did not look at the
2 ratings.

3 Q. Okay.

4 A. I'm not sure.

5 Q. And let's look at the -- at the on
6 Exhibit 10. What's the time period
7 that this performance appraisal
8 covers?

9 A. 12/21/06 through February 23rd, '07,
10 which sounds correct since that last
11 one was the 20th of December.

12 Q. Okay. Do you recall what date
13 Ms. Jackson was transferred to Tony
14 Cooper?

15 A. No, I don't. I want to say it was the
16 end of January, the beginning of
17 February.

18 Q. Okay. I want to show you what I've
19 marked as Exhibit 11. Do you
20 recognize that document?

21 (The referred-to document was
22 marked for identification
23 as Plaintiff's Exhibit No. 11.)

1 A. Yeah, I think so.

2 Q. And can you tell me what it is?

3 A. It's a transfer letter --

4 Q. Okay.

5 A. -- for Ms. Jackson.

6 Q. It actually doesn't say anything about
7 a transfer, does it?

8 A. Oh, maybe I need to read it.

9 Q. That would probably be good.

10 A. (Witness reviewing document.)

11 Okay. No, I never
12 received a copy of this. Tony Cooper
13 and Jeanette Brown did.

14 Q. Okay. When an employee is
15 transferred --

16 (Off-the-Record discussion.)

17 Q. When an employee is transferred from
18 one project engineer to another, they
19 get a letter saying they're being
20 transferred; right?

21 A. Right.

22 Q. Did you ever see a letter like that
23 for Ms. Jackson --

1 A. I think I did.

2 Q. -- saying that she was being
3 transferred to Tony Cooper?

4 A. Yes.

5 Q. And based on the date in that letter,
6 it looks like she was being
7 transferred to Tony Cooper around the
8 13th of January; correct?

9 A. Yes. It appears that way.

10 Q. And she was supposed to get a new
11 Form 40 around that date,
12 February 13th?

13 A. I think this is referring to that --
14 that transfer and, you know, her
15 new -- well, it says, due to her
16 pregnancy, you're going to have to
17 revise her Form 40 to reflect her new
18 duties, I guess, as office engineer.

19 Q. So given this letter, it looks like
20 you supervised Ms. Jackson after her
21 first performance appraisal; you
22 supervised her until around the middle
23 of February; is that right?

1 A. I wasn't thinking it was that long.

2 Q. Okay. So a shorter period of time?

3 A. I was thinking the end of

4 January maybe -- maybe six weeks.

5 Q. Maybe six weeks? On her -- on this

6 performance appraisal that's

7 Exhibit 10, it shows her being rated

8 from December 21st to February 23rd;

9 right?

10 A. Yes.

11 Q. And yet you, as her direct supervisor,

12 had no input on what her ratings

13 scores were going to be on that

14 appraisal?

15 A. No.

16 Q. You did not?

17 A. I think it was a transition period

18 there where she went from me to Tony,

19 and she had new office duties. And

20 between, I think, Jay, I think,

21 handled the ratings, but I think I

22 might have had some input. Maybe Tony

23 might have had some input.

1 Q. But Jay was the one who came up with
2 this -- by Jay, I mean Mr. Palmer. He
3 was the one that came up with the
4 numerical ratings scores, as far as
5 you know?

6 A. Yes, as far as I know.

7 Q. And do you know what he based those
8 scores on?

9 A. I think just through discussions with
10 me and Tony.

11 Q. Okay. So now you think Mr. Palmer did
12 talk to you about Ms. Jackson's work
13 performance? Earlier you said you
14 didn't. Are you changing your mind
15 about that now?

16 A. No. I mean, I don't think I ever said
17 I was a hundred percent positive that
18 he talked -- that he didn't talk to me
19 about her performance. I don't
20 remember saying that.

21 Q. Okay. And so when you talked to
22 Mr. Palmer about her work performance,
23 did you tell him the same thing that

1 you told me, which was that you never
2 had a problem with her work, that you
3 thought her work was fine?

4 A. Yeah. I thought her work was decent.

5 Q. Okay.

6 A. I think it was average. You know,
7 she -- like everybody, some people
8 need to improve in some areas; some
9 people meet standards; some people
10 exceed standards.

11 Q. So how do you explain the really poor
12 ratings that she got on Page 2 of her
13 performance appraisal?

14 A. I don't -- I don't intend to explain
15 it.

16 Q. Can you explain how she got such low
17 ratings in her various
18 responsibilities?

19 A. I would have to go back and see what
20 kind of classes she had and what she
21 took and if she did pass them. That
22 would explain the 1 on training
23 courses.

1 (Off-the-Record discussion.)

2 Q. I mean, you would agree with me that
3 her ratings went down considerably
4 from the December 20th review to
5 the -- to this review in February,
6 wouldn't you?

7 A. Oh, yes.

8 Q. I mean, she is getting 3s and 2s and a
9 couple of 1s in December, and now
10 she's getting nothing but 1s and 2s;
11 right?

12 A. That's right.

13 Q. Okay. And then you testified earlier,
14 I think, that you didn't think her
15 work performance got any worse during
16 that time?

17 A. No, I don't think it got worse.

18 Q. Okay. So do you have any explanation
19 for how her scores went down so much?

20 A. No.

21 Q. Are you aware that Ms. Jackson filed
22 for unemployment after she was
23 terminated?

1 A. No.

2 Q. You're not aware of that? You don't
3 remember doing the unemployment
4 hearing over the phone?

5 A. I don't think so. What kind of
6 hearing?

7 Q. There was a telephone hearing with the
8 Alabama Department of Industrial
9 Relations where you testified under
10 oath that --

11 A. I do. With Leon Malone and Jay
12 Palmer, yes.

13 Q. Okay. You do recall that?

14 A. Yes.

15 Q. And just a few more about the
16 January 5th incident. How many calls
17 do you think Ms. Jackson made during
18 the initial meeting in your office?

19 A. Do I recall?

20 Q. Yeah.

21 A. One or two.

22 (Off-the-Record discussion.)

23 Q. One or two? Okay.

1 A. I'm talking about outgoing and
2 incoming --

3 Q. Yeah.

4 A. -- either/or. I just remember her
5 being on the phone.

6 Q. Okay. Let me show you what I've
7 marked as Exhibit 12 to your
8 deposition. Do you recognize this
9 document?

10 (The referred-to document was
11 marked for identification
12 as Plaintiff's Exhibit No. 12.)

13 A. Yes.

14 Q. And this is your memo to the file
15 about the morning meeting; correct?

16 A. Yes.

17 Q. Is this your memo to the file about
18 the morning meeting?

19 A. Yes.

20 Q. Okay. And in this memo toward --
21 about five lines up from the bottom,
22 it says (as read:) Ms. Jackson once
23 again called someone on her cell phone

1 and left the office without my
2 knowledge.

3 Is that right?

4 A. Yes.

5 Q. Okay. Do you know -- are you certain
6 that she called somebody once again on
7 her cell phone?

8 A. Yes.

9 Q. Okay. So she --

10 A. Because about midway up it says that
11 she called Mr. Boone in Montgomery --

12 Q. Right.

13 A. -- and left him a message --

14 Q. So as far as you can --

15 A. -- then asked me if Mr. Malone was at
16 work.

17 Q. Okay. So she made two -- two outgoing
18 phone calls from her cell phone during
19 the meeting with you?

20 A. She -- she -- I mean, that's what I'm
21 observing. She -- she might have been
22 checking her voice mail. She could
23 have been doing anything. But she had

1 that phone up to her ear. I don't
2 know if she called somebody or
3 somebody called her.

4 Q. Okay. So when you say in this memo --

5 A. She was on the phone doing something
6 instead of in our meeting.

7 Q. Right. But where you say in this
8 memo, Ms. Jackson once again called
9 someone on her cell phone, you're not
10 really sure that that's true?

11 A. Well, I mean, this -- I feel like this
12 would probably be more accurate than
13 my memory.

14 Q. Okay. So then you think it's accurate
15 that she probably called two people
16 from her cell phone during the
17 meeting?

18 A. Sure. Yes.

19 Q. Okay. And then the second to the last
20 sentence says (as read:) I called
21 Ms. Jackson on her cell phone and left
22 her a message saying that I needed to
23 speak to her again before her class

1 started.

2 A. Uh-huh.

3 Q. What -- what was the reason that you
4 needed to speak to her again before
5 class started?

6 A. Probably to continue our conversation
7 that she walked out on.

8 Q. Okay. So you were still wanting to
9 talk to her more about signing the
10 memo?

11 A. Yeah.

12 Q. Okay. What else did you have to say
13 to her about it at that time?

14 A. Trying to see if she wanted to sign
15 the thing. I mean, basically in the
16 middle of our meeting, all this phone
17 conversation started going on where
18 she was wanting to talk on the phone
19 or -- and -- and she left, and that
20 was the end of it.

21 Q. So she leaves your office, possibly in
22 tears as you testified to earlier, and
23 you call her because you want to keep

1 talking to her about the memo?

2 A. I mean, you asked me what I called her
3 about, what I wanted to speak to her
4 about, and that's a possibility of
5 what I wanted to speak to her about.

6 Q. So you don't remember exactly right
7 now?

8 A. No. And this memo don't say anything
9 about why I wanted to talk to her, so
10 that's not going to jog my memory
11 about it.

12 Q. All right. About 10 lines from the
13 top, you say (as read:) I asked
14 Ms. Jackson if she needed more time to
15 read the policy and told her that
16 signing this document does not mean
17 that she agreed with it.

18 Is that right?

19 A. Uh-huh.

20 Q. Did she say that she needed more time
21 to read the policy at that point?

22 A. I don't -- I don't know. She -- she
23 said that she wasn't going to sign it

1 at that point.

2 Q. Okay. Now, you say in here that she
3 asked you if Leon Malone was at work,
4 and you told her that he wouldn't be
5 there until 8; right?

6 A. (Nods head.)

7 Q. Okay. Did she tell you at any point
8 that she wanted to go and talk to him,
9 or did she just ask if he was in?

10 A. I don't know. She might have just
11 asked if he was in.

12 Q. Okay.

13 A. But, I mean, I probably would have
14 assumed at the time that she wanted to
15 go speak with somebody, but I mean, he
16 wasn't at work yet.

17 Q. Okay. When she got up and left --
18 when she got up and left your office,
19 she had -- she had to go physically
20 open the door; right, to get out of
21 your office?

22 A. Uh-huh.

23 Q. Is that right?

1 A. Yes.

2 Q. Okay. Did you ask her to come back in
3 at that time?

4 A. I think she was on the phone when she
5 walked out.

6 Q. Okay. Did you ask her to come back
7 in?

8 A. Yeah.

9 Q. Okay. Did you ask her to hang up the
10 phone?

11 A. Yes. I mean, if you're in a
12 meeting -- say right now I started
13 talking on my cell phone, I
14 mean that's -- that's common sense. I
15 know that you probably want me to get
16 off the phone; right, and continue
17 this meeting? That's kind of what
18 took place that morning.

19 Q. Okay. Did you ever ask her to hang up
20 her phone?

21 A. Yeah, I think I did. I mean, I --

22 Q. Does it say in there that you ever
23 asked her that?

1 A. I don't know. I haven't read the
2 whole thing.

3 Q. Go ahead and read it and tell me if it
4 says it in there, that you asked her
5 to get off the phone.

6 A. (Witness reviewing document.)

7 All right. (As read:)
8 Ms. Jackson once again called someone
9 on her cell phone and left my office
10 without my knowledge at approximately
11 7:30.

12 She walked out of the
13 meeting of our office -- my office on
14 the phone. All right. She was
15 walking around on the other end of the
16 office, back in Chris Burdette's
17 office, and I saw her leave out of
18 that door at around 7:30. So no, I
19 didn't have a chance to say, you know,
20 where are you going; stop. I walk
21 out, and I see her heading up to
22 division office.

23 Q. When she got up to leave your office

1 and open the door, did she do that for
2 the purpose of continuing her phone
3 conversation --

4 A. Yeah.

5 Q. -- or did she do that because your
6 meeting was over?

7 A. No. For the purpose of continuing her
8 phone conversation.

9 Q. Did you give her permission to do
10 that?

11 A. No.

12 Q. Did you tell her she couldn't do that?

13 A. I didn't give her permission to leave.

14 Q. Did you tell her she couldn't do that?

15 A. No. But I mean, you -- you can't just
16 leave and -- and go off.

17 Q. Right. You had already given her to
18 the end of the day to sign the memo;
19 right?

20 A. Yeah.

21 Q. And that was the issue that you guys
22 were discussing was, you know, you
23 were telling her she needed to sign

1 it, and she essentially didn't want
2 to; right?

3 A. Yes. She said she wasn't going to.

4 Q. Okay. So then you gave her some
5 closure, saying, you've got to sign by
6 the end of the day, and that was it;
7 right?

8 A. I think so.

9 Q. Okay. Was there anything more to
10 discuss about the memo with her after
11 you gave her that ultimatum?

12 A. Maybe find out where she went.

13 Q. No. I asked you was there anything
14 more to discuss about the memo after
15 you gave her that ultimatum.

16 A. About what memo?

17 Q. About the taping -- taping policy?

18 A. The policy? I'm not sure. I mean,
19 there might have been at that point in
20 time.

21 Q. If there was, you don't remember what
22 it is right now?

23 A. No. I think I, more than anything,

1 just wanted to know why she left
2 and -- and where she was going.

3 Q. But she had a class to go to; right?

4 A. Right. But like this says, she
5 stormed out at about 7:30, which is
6 not what time class is.

7 Q. Okay. But that is the time that the
8 registration for the class started;
9 right?

10 A. I don't know. I would have to go back
11 and look. I mean, if you're going to
12 show me that the class registration
13 started at 7:30, I'll take your word
14 for it.

15 Q. Okay. Well, you don't have to take my
16 word for it because you can look at
17 the memo.

18 (The referred-to document was
19 marked for identification
20 as Plaintiff's Exhibit No. 13.)

21 A. Okay.

22 Q. Okay. So she was -- she was perfectly
23 reasonable in leaving your office at

1 that point in time to -- in leaving
2 your office, because that's when the
3 registration started; right?

4 A. Not like --

5 MR. REDD: Object to the form.

6 A. Not the way she went about leaving.

7 Q. Not the way she went about leaving?

8 Okay. Do you think it would be
9 unreasonable for her to leave like
10 that because she was upset and in
11 tears?

12 A. Repeat the question.

13 Q. Okay. You testified earlier that she
14 may have been in tears at the time she
15 left your office; right?

16 A. Well, she was on the phone, I mean, on
17 the other end of the office at this
18 point when she left. I -- I don't
19 know --

20 Q. Okay. I think we're getting confused
21 about what leaving the office --
22 you're talking about when she actually
23 physically walked out of the trailer?

1 A. Yes, that's what I'm exactly talking
2 about.

3 Q. Okay. So your objection was not to
4 her getting up and opening the door
5 and leaving your office; right?

6 A. No. Well, I mean, it wasn't very
7 appropriate when we're in the middle
8 of a meeting taking a cell phone call,
9 you know. But we never did, I feel
10 like, get a closure on that meeting
11 before she left.

12 Q. Okay. Even though you told her she
13 had until the end of the day to sign
14 the policy?

15 A. Yes.

16 Q. So the next conversation that you had
17 with Ms. Jackson about that -- I keep
18 calling it the memo; it's really the
19 taping policy -- on January 5th was
20 the meeting in the office of
21 Mr. Malone at about 3:15; right?

22 A. Right.

23 Q. And I've marked as Exhibit 14 what I

1 think is your memo about that meeting;
2 is that right?

3 (The referred-to document was
4 marked for identification
5 as Plaintiff's Exhibit No. 14.)

6 A. Yes.

7 Q. Ms. Jackson came back to your office
8 first at that time; right?

9 A. Uh-huh, yes.

10 Q. Okay. And she invited you to go talk
11 with Mr. Fresolone about the policy
12 with her; correct?

13 (Off-the-Record discussion.)

14 MR. REDD: That's a strange
15 choice of words, invited,
16 but I don't have an
17 objection to it.

18 A. She stated that she talked to Joey
19 Fresolone on the phone and that she
20 was going to wait until the 16th to
21 sign it. Well, that was my deadline
22 to turn it in. And I'm trying to read
23 where you're saying that she invited

1 me to go --

2 Q. Read the next sentence (as read:) She
3 stated if I would like to go to talk
4 to Mr. Fresolone, that we could meet
5 him in his office.

6 And you stated that would
7 be fine.

8 A. Okay.

9 Q. Okay. So you agreed that it would be
10 appropriate to go talk to
11 Mr. Fresolone at that time; right?

12 A. Uh-huh.

13 Q. Is that right?

14 A. Yes.

15 Q. You didn't have any objection to going
16 to talk to Mr. Fresolone?

17 A. No.

18 Q. Earlier I had asked you some questions
19 about Ms. Jackson's allegations during
20 the meeting that she thought that you
21 were discriminating against her
22 because she was female.

23 If you look at Page 2,

1 right in the middle of the page there,
2 it says (as read:) Ms. Jackson also
3 stated that she felt threatened and
4 that I had harassed and discriminated
5 against her due to the fact that she
6 was female.

7 Does that refresh your
8 memory about her saying that now?

9 A. Uh-huh. I never said that she didn't
10 say it.

11 Q. I know. I'm just making sure that
12 this is an accurate description of the
13 conversation.

14 What was the discussion
15 about -- about that? Was there more
16 discussion about why she thought you
17 were discriminating against her as a
18 female?

19 A. I don't recall. If it's not here,
20 then I don't guess it was. If we went
21 in depth on why I was discriminating
22 against her, I'm not sure.

23 Q. Okay. I want to show you what I have

1 marked as Exhibit 15 to your
2 deposition. Just so we have that on
3 the record, is that the reprimand that
4 you gave Ms. Jackson?

5 (The referred-to document was
6 marked for identification
7 as Plaintiff's Exhibit No. 15.)

8 A. Yes.

9 Q. And you copied Jeanette Brown and
10 Vince Calametti on it; correct?

11 A. Yes, sir.

12 Q. Okay. Do you know if Mr. Palmer also
13 saw this reprimand before you gave it
14 to Ms. Jackson?

15 A. I think he did.

16 Q. Okay. And basically --

17 A. I'm -- yeah, he -- he did.

18 Q. He did see it?

19 A. (Nods head.)

20 Q. Okay. Did he approve it before you
21 gave it to her?

22 A. Yes. I mean, after all that -- you
23 know, after that day, everybody --

1 we -- we mentioned, I guess, touched
2 on earlier about how we all met, and I
3 basically gathered all the facts
4 together. And since I was her direct
5 supervisor, that was my job to issue
6 this letter of reprimand.

7 Q. What was the purpose for gathering all
8 those facts?

9 A. Because there was so many people
10 involved.

11 Q. What was the -- what did you think the
12 outcome of gathering all those facts
13 was going to be?

14 A. I wasn't in charge of the operation.
15 I just -- you know, these are my
16 bosses telling me, hey, we need to --
17 everybody from Leon Malone and me,
18 myself, and Charly Jones and Joey
19 Fresolone -- I mean, there was four or
20 five people involved in there.

21 Q. All right. But at some point you
22 figured out that they wanted you to
23 gather all of these facts so you could

1 issue her a reprimand; right?

2 A. Yes.

3 Q. Okay.

4 A. I thought that was -- you know,
5 everybody talked about it, what
6 happened that day, all the -- you
7 know, that whole chain of events that
8 happened that day --

9 Q. Uh-huh.

10 A. -- and what would be the course of
11 disciplinary action taken that would
12 best be --

13 Q. So everybody -- everybody knew pretty
14 early on that they wanted to take some
15 kind of disciplinary action for what
16 happened on January 5th; right?

17 A. Yes.

18 Q. Okay. And so far as you know, nobody
19 ever talked about terminating her for
20 January 5th; right?

21 A. No.

22 Q. Was Ms. Jackson insubordinate on
23 January 5th?

1 A. Her demeanor --

2 Q. Okay.

3 A. -- was insubordinate, yes.

4 Q. Okay. What was it about her demeanor
5 that was insubordinate?

6 A. Her disruptive behavior.

7 Q. What, to your understanding,
8 constitutes insubordination? What
9 does that word mean?

10 A. Basically refusing to, in this case,
11 sign a policy that everybody else had
12 to sign --

13 Q. Okay.

14 A. -- and the whole demeanor, her
15 attitude, you know, everything that
16 happened that day, all the meetings,
17 basically her -- her conduct in the
18 office that morning, stating that, you
19 know, she wasn't going to sign it.
20 And it took until the end of that day,
21 I think. We were meeting even after
22 hours, I know after we were supposed
23 to get off, until finally Joey finally

1 got her to sign.

2 Q. How did he do that?

3 A. After a day's worth of meetings and
4 talking with her, I believe, a couple
5 times and then that afternoon, that
6 meeting, finally she was -- I remember
7 she was upset, and finally it got
8 turned around to where she was upset
9 with me more than anything and that
10 she didn't have a problem with the
11 policy, which totally went against
12 what she stated earlier in the day.
13 So she signed the policy.

14 Q. And that was at the end of the day
15 when she realized that she didn't have
16 a problem with the policy?

17 A. Yes.

18 Q. And that was after people had been
19 talking to her about it and explaining
20 it to her?

21 A. Uh-huh.

22 Q. Was she insubordinate during that last
23 meeting that you had in Fresolone's

1 office?

2 A. Basically I was observing most of that
3 meeting.

4 Q. Okay. Was she insubordinate during
5 that meeting?

6 A. But, I mean, you could read through it
7 and -- and depending on who you ask,
8 maybe -- but I think the end result
9 was, yes, she signed the -- she signed
10 the document --

11 Q. Right. But was she insubordinate
12 during that meeting?

13 A. To a point, yes. I mean, if you ask
14 me, if you're my supervisor,
15 seven hours out of the day to do
16 something and I don't do it, and at
17 the end of the day it gets done, am I
18 insubordinate or not? I mean, my
19 attitude, yeah. And at the time, when
20 I ask you to -- or when you asked me
21 to do something and I didn't do it, I
22 was insubordinate. But the end
23 result, say 5 o'clock, I get it done,

1 I mean, that's just a kind of a tough
2 question to answer.

3 Q. I mean, you're the one who issued the
4 written reprimand saying she was
5 insubordinate; right?

6 A. Yes.

7 Q. Okay.

8 A. And I felt like and everybody else
9 felt like her demeanor was
10 insubordinate that day.

11 Q. Okay. Was she insubordinate during
12 the meeting, that last meeting in
13 Mr. Fresolone's office?

14 MR. REDD: I think he answered
15 that already.

16 Exceptional
17 circumstances.

18 MR. SIMON: Okay.

19 Q. To what extent was she insubordinate
20 in Mr. Fresolone's office?

21 A. Well, the meeting lasted a couple
22 hours, an hour and a half, and she
23 signed it, and the meeting was over.

1 I mean, if -- to a certain extent, I
2 guess it would be the first hour we
3 met.

4 Q. The first hour you met?

5 A. When he was requesting that she sign
6 this document that everybody else in
7 the whole division had to sign.

8 Q. So that last meeting in
9 Mr. Fresolone's office lasted an hour?

10 A. I'm using that as an example. I don't
11 know.

12 Q. You don't know how long it lasted?

13 A. I don't remember. It might say -- we
14 went to Joey's office, say, shortly
15 after she came back to my office at
16 3:30, say -- and it doesn't say what
17 time the meeting ended.

18 Q. Okay. So --

19 A. But, you know, from what I recall, it
20 lasted at least an hour, hour and a
21 half.

22 Q. Okay. And that was the meeting that
23 Gwenda Hunter and Leon Malone were

1 also in?

2 A. Yeah.

3 Q. Was it insubordinate of Ms. Jackson to
4 go and talk to Mr. Fresolone that
5 morning?

6 A. I feel that that probably wasn't
7 insubordinate for her to go and talk
8 to Joey.

9 Q. It was -- it was not insubordinate or
10 it was?

11 A. I don't think that it probably was.
12 But you've got to take into account
13 that whole day. You're trying to
14 break it down into each individual
15 encounter, and you've got to take into
16 account that whole day. We -- we met
17 and decided on two weeks on this, we
18 decided on, and the course of action
19 that took place that whole day
20 resulted in this letter.

21 Q. I understand that, and in the letter
22 you say she was insubordinate, and I'm
23 trying to figure out why you say she

1 was insubordinate.

2 A. Well, I mean, everybody felt that way.

3 Q. And I understand that. But I still
4 didn't understand the answer to the
5 question, was going to talk to
6 Mr. Fresolone insubordinate?

7 A. I don't think it was insubordinate,
8 because I never said, you know, don't
9 go talk to Joey Fresolone.

10 Q. Okay. So insubordination is something
11 where you refuse to follow a direct
12 command --

13 MR. REDD: Objection to the
14 form.

15 Q. -- is that correct?

16 A. I mean, I feel like -- insubordination
17 through her demeanor that day was --
18 you know, I -- if you said that
19 individual event, if I was to say to
20 her -- which I never received a chance
21 to because she left her work station,
22 which is a whole different issue, how
23 she did that. But I had no idea she

1 was even going to see Joey. But her
2 going normal -- under normal
3 circumstances, if she wanted to go see
4 Joey, there's not a problem with that.

5 Q. Okay. So her actually going to see
6 Joey Fresolone that morning you don't
7 think was insubordinate?

8 A. Huh-uh.

9 Q. But her leaving the building was
10 insubordinate?

11 A. I felt like that was leaving her work
12 station at the time.

13 Q. Okay. So that -- that wasn't an act
14 of insubordination --

15 A. Until I found out, you know, after
16 everything that happened that morning,
17 and then also it kind of fit in the
18 time frame with her concrete class.

19 Q. Was it insubordinate for her to ask to
20 call her lawyer during the meeting in
21 the morning with you?

22 A. I don't -- I don't guess that would be
23 insubordinate.

1 Q. Was it insubordinate of her to take a
2 call on her cell phone during a
3 meeting?

4 A. I felt like it was inappropriate.

5 Q. Inappropriate, but not necessarily
6 insubordinate?

7 A. I think you can break this down
8 however you want to.

9 Q. That's what I'm trying to do.

10 A. And you can't do that.

11 (Off-the-Record discussion.)

12 Q. Your contention that she was
13 insubordinate was based on your
14 feeling about her, the way she
15 conducted herself over the whole
16 course of the day; is that right?

17 A. Yes. Her conduct that day and
18 refusing to sign it several hundred
19 times.

20 Q. Okay. And you would agree with me
21 that Ms. Jackson did a lot of things
22 on January 5th that were not
23 insubordinate; right?

1 A. No. I mean --

2 Q. She went to her concrete class and --

3 A. -- half the day -- half the day she
4 wasn't even around. She was in her
5 concrete class.

6 Q. Yeah.

7 A. Mainly that morning her disruptive
8 behavior in the office -- trailer,
9 disrupting other people from work,
10 refusing to sign this policy, I would
11 say, yes, was definitely insubordinate
12 behavior.

13 Q. Okay. So those were insubordinate.
14 What about in the afternoon? Was she
15 insubordinate during the meeting in
16 Mr. Fresolone's office?

17 A. She ended up signing it. I mean --

18 Q. Okay. To what extent was she
19 insubordinate during the meeting --

20 A. I don't know how to answer that
21 question.

22 Q. Okay. Was she insubordinate when she
23 wanted a witness to be in there with

1 her?

2 A. No. Nobody had a problem with her
3 having a witness.

4 Q. Okay. Was she insubordinate --

5 A. She was insubordinate when it took
6 Joey Fresolone an hour and a half to
7 get her to sign that policy.

8 Q. So now the meeting took on hour and a
9 half?

10 A. I'm using that as an example. I don't
11 know exactly how long it took. I
12 mean, do you know, so I can say the
13 correct time from now on?

14 Q. You can't ask questions during the
15 deposition. I'm the one asking
16 questions.

17 A. Okay.

18 Q. Was she insubordinate when she said in
19 Mr. Fresolone's office that the policy
20 is illegal?

21 A. As a reason, you know, to not sign
22 that, yes, that was insubordinate to
23 Joey.

1 Q. Okay. Was it insubordinate --

2 A. After -- after Leon Malone -- I'm
3 sorry to cut you off. But after Leon
4 Malone was sitting there and the EEO
5 explained to her that this policy was
6 legal, you know, this was a perfectly
7 legal document; you're not signing
8 anything that is illegal. And she
9 still said that she -- you know, this
10 is illegal; I'm not signing it.

11 Q. Is Mr. Malone a lawyer?

12 A. No.

13 Q. Okay. He works for the DOT; right?

14 A. Yes.

15 Q. He's the EEO officer?

16 A. Yes.

17 Q. Was -- was it insubordinate of
18 Ms. Jackson to say that she thought
19 you were forcing her into positive
20 progressive discipline and that you
21 wanted her dismissed from ALDOT?

22 A. Was that insubordinate, her stating
23 that?

1 Q. Right. Was that insubordinate?

2 A. That's -- that's her opinion.

3 Q. Was it insubordinate of her to state
4 that at that time?

5 A. No. I don't see why it would be.

6 Q. Okay. Was it insubordinate of
7 Ms. Jackson to say that she didn't
8 understand the policy?

9 A. No, not at all.

10 Q. And it wasn't insubordinate of her to
11 say that she needed a lawyer to read
12 over it; right?

13 A. I mean, I don't -- that's fine. And I
14 think they even explained to her at
15 that time that you can get all the
16 lawyers you want to read over this,
17 but we need your signature, you know.

18 Q. Okay. And it wasn't insubordinate
19 when she said that she felt threatened
20 and harassed by you, was it?

21 A. No. That's her opinion.

22 Q. Okay. And was it insubordinate of her
23 to express that opinion during that

1 meeting?

2 A. To say that?

3 Q. Right.

4 A. To express and to state that?

5 Q. Yes.

6 A. No.

7 Q. And it wasn't insubordinate of her to
8 say that she felt you discriminated
9 against her, was it?

10 A. Huh-uh.

11 Q. I'm sorry. Is that a no?

12 A. No.

13 Q. Was it insubordinate of Ms. Jackson to
14 say that she wanted to file a
15 complaint against you because of the
16 tone of your voice and how you treated
17 her that morning?

18 A. No.

19 Q. And Ms. Jackson actually signed the
20 policy after she met privately with
21 Gwenda Hunter; correct?

22 A. Yes.

23 Q. Did -- was January 5th also the day

1 that she gave you the first note about
2 her pregnancy?

3 A. I don't recall. No. If that's the
4 day that the -- this took place, the
5 recording policy, I don't believe so.

6 Q. Okay. Do you know -- do you remember
7 whether she gave you that first
8 pregnancy note before or after the day
9 of this recording policy issue?

10 A. I don't recall.

11 Q. Did you know that Ms. Jackson is
12 related to Bertha Alexander?

13 A. At the time, no.

14 Q. Okay. When did you learn that?

15 A. I don't recall when I found out.

16 Q. Okay. How did you find out?

17 A. Just through -- I think through
18 LaShundra stating that, that we were
19 retaliating against her because that
20 was her aunt or related to her or
21 something.

22 Q. Okay. When did -- when did she say
23 that?

1 A. I'm not sure.

2 Q. Was that before or after the incident
3 on January 5th?

4 A. It was around then. I mean, it might
5 have been around the performance
6 appraisal or that event, or maybe in
7 her rebuttal for her reprimand. I'm
8 not sure.

9 Q. Okay. Was Ms. Jackson the only person
10 that you ever gave a written reprimand
11 to at DOT?

12 A. Yes.

13 Q. Okay. Did -- did anyone from ALDOT's
14 Human Resources Bureau contact you to
15 talk about Ms. Jackson's grievance?

16 A. I don't recall.

17 Q. Do you recall talking to a woman named
18 Sandy Deitz about it?

19 A. I think she came down, but I don't
20 know when.

21 Q. Okay. Do you recall the conversation
22 that you had with her?

23 A. I think it was about -- I think it was

1 about the performance appraisal maybe.

2 Q. Did you meet with Ms. Deitz privately,
3 or was there other people there?

4 A. There were other people there. Vince
5 Calametti and Jay Palmer were there.

6 Q. Okay. So you all met together. Was
7 there anybody else there?

8 A. Not that I recall.

9 Q. Did the issue of Ms. Palmer -- did the
10 issue of Ms. Jackson being terminated
11 come up at any time during that
12 meeting with Ms. Deitz?

13 A. I don't recall.

14 Q. Is it possible that it did and you
15 just don't remember it?

16 A. I don't think it did.

17 Q. How long was that meeting with
18 Ms. Deitz?

19 A. I don't remember. Maybe 30 minutes.

20 Q. Okay. Did she explain to you then
21 that Ms. Jackson had filed a
22 grievance?

23 A. I think so.

1 Q. Did she say what the grievance was
2 about?

3 A. I don't -- I don't know if she did. I
4 don't recall what it was about. I
5 don't know.

6 Q. Did you ever see Ms. Deitz's
7 investigative findings about the
8 grievance?

9 A. No.

10 Q. Did you play any part in preparing the
11 new Form 40 for her inside duties?

12 A. No, sir.

13 Q. Do you know who prepared that?

14 A. I believe Tony Cooper along with Vince
15 Calametti.

16 Q. I believe that's all I have. Let's
17 take five minutes.

18 (Off-the-record discussion.)
19

20 (The deposition of **BRET PAULK**
21 concluded at approximately 5:47 p.m.,
22 on June 18th, 2008.)
23

* * * * *
REPORTER'S CERTIFICATE
* * * * *

STATE OF ALABAMA
COUNTY OF MONTGOMERY

I, Karen Reagan Drinkard,
AL-CCR #005, Certified Court Reporter
and Notary Public in and for the State
of Alabama at Large, do hereby certify
that on June 18th, 2008, pursuant to
notice and stipulation on behalf of
the Plaintiff, I reported the
deposition of **BRET PAULK**, who was
first duly sworn by me to speak the
truth, the whole truth, and nothing
but the truth, in the matter of
LASHUNDRA JACKSON, Plaintiff, versus
STATE OF ALABAMA DEPARTMENT OF
TRANSPORTATION, JOE MCINNES, in his
official capacity as DIRECTOR OF THE
STATE OF ALABAMA DEPARTMENT OF
TRANSPORTATION, Defendants, Civil

Action Number 2:07-CV-645-MEF, now pending in the United States District Court for the Middle District of Alabama, Northern Division; that the foregoing 186 typewritten pages contain a true and accurate transcription of the examination of said witness by counsel for the parties set out herein; that the reading and signing of said deposition was waived by witness and counsel for the parties.

I further certify that I am
neither of kin nor of counsel to the
parties to said cause, nor in any
manner interested in the results
thereof.

This 21st day of June, 2008

Karen Reagan Drinkard, ACCR #005
Reporter and Notary Public
State of Alabama at Large

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF ALABAMA
3 NORTHERN DIVISION

4 LASHUNDRA
5 JACKSON,

6 Plaintiff,

7 vs.

CIVIL ACTION NO.
2:07-CV-645-MEF

8 STATE OF ALABAMA
9 DEPARTMENT OF
10 TRANSPORTATION,
11 JOE McINNES, in
12 his official
13 capacity as
14 DIRECTOR OF THE
15 STATE OF ALABAMA
16 DEPARTMENT OF
17 TRANSPORTATION,

18 Defendants.

19 * * * * *

20 **DEPOSITION OF JAY PALMER,**

21 taken pursuant to notice and
22 stipulation on behalf of the
23 Plaintiff, in the Ninth Division
Office of the Alabama Department of
Transportation, 1701 I-65 West Service
Road North, Mobile, Alabama, before
Karen Reagan Drinkard, AL-CCR #005,
Certified Court Reporter and Notary
Public in and for the State of Alabama
at Large, on June 19th, 2008,
commencing at 8:32 a.m.

1 APPEARANCES

2
3
4 FOR THE PLAINTIFF:

5
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7 Ross, Melton, PC

8 Attorneys at Law

9 1104 San Antonio Street

10 Austin, Texas 78701

11
12
13 FOR THE DEFENDANTS:

14
15 **ANDREW REDD, ESQUIRE**

16 and

17 **JASON A. TRIPPE, ESQUIRE**

18 State of Alabama Department of

19 Transportation

20 1409 Coliseum Boulevard

21 Montgomery, Alabama 36110

STIPULATIONS

It is stipulated and agreed by and between counsel representing the parties that the deposition of **JAY PALMER** may be taken before Karen Reagan Drinkard, AL-CCR #005, Certified Court Reporter and Notary Public in and for the State of Alabama at Large, without the formality of a commission; and all formality with respect to other procedural requirements is waived; that objections to questions, other than objections as to the form of the questions need not be made at this time, but may be reserved for a ruling at such time as the deposition may be offered in evidence or used for any other purpose by either party as provided by the Federal Rules of Civil Procedure.

1 It is further stipulated and
2 agreed by and between the parties
3 hereto and the witness, that the
4 signature of the witness to this
5 deposition is hereby waived.

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EXHIBITS

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PX-16 E-mail chain between 27
Jeanette Brown and Debra
Hadley, cc'g others,
10/19/06

PX-17 Document entitled 43
"Relatives Employed with
the Department of
Transportation", signed
7/3/06

PX-18 ALDOT Complaint Form, 72
date submitted 10/16/06

PX-19 Investigative 88
Determination Re:
LaShundra Jackson,
Docket # DOT146, 2/14/07

PX-20 Memo to File from Joe 95
Fresolone, 1/9/07

PX-21 Form 40 Position 113
Classification
Questionnaire, signed by
Appointment Authority
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PX-22 Letter to Vince 126
Calametti from Jay
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PX-23 Affidavit of Samuel J. 133
(Jay) Palmer, Jr.,
signed 5/27/08

PX-24 E-mail between Nita 160
Jernigan and Debra
Hadley Re: Concrete Test
Results, 2/22/07

PX-25 Document Entitled 161
"Decision on
Unemployment
Compensation Claim",
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(The following exhibits were
previously marked in this case and
referred to at the following pages:)

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1 **JAY PALMER**, of lawful
2 age, having first been duly sworn,
3 testified as follows:
4

5 **EXAMINATION**

6 **BY MR. SIMON:**

7 Q. Could you state your full name for the
8 record, please?

9 A. Samuel Jason Palmer, Jr.

10 Q. And what's your position here,
11 Mr. Palmer?

12 A. I'm the district engineer here in
13 Mobile.

14 Q. Okay. We met before. My name's Kell
15 Simon, and I represent LaShundra
16 Jackson in her lawsuit again the DOT.

17 What did you do to get
18 ready for your deposition?

19 A. I met with Mr. -- Mr. Redd, Monday.

20 Q. You met with him just one time?

21 A. We met previously two, three weeks ago
22 prior to that.

23 Q. Okay. And how long was your meeting

1 two or three weeks ago?

2 A. I can't recall.

3 Q. How about Monday? How long did you
4 meet for on Monday?

5 A. 30 minutes at most.

6 Q. Have you reviewed any documents to
7 prepare for your deposition?

8 A. I think we looked at some Monday.

9 Q. All right. What were they?

10 A. I don't recall them.

11 Q. Were they documents that you had
12 written?

13 A. Yes.

14 Q. When did you first meet LaShundra
15 Jackson?

16 A. I don't recall the date. It was when
17 she was hired.

18 Q. Okay. And you were the district
19 engineer at that time?

20 A. That's correct.

21 Q. What position was she hired into?

22 A. She was hired as an Engineer
23 Assistant I.

1 Q. And who was she assigned to work
2 under?

3 A. I believe it was Austin Harville.

4 Q. And he was a project engineer; is that
5 right?

6 A. That's correct.

7 Q. And he left the Department at some
8 point; is that correct?

9 A. Yes.

10 Q. And was Ms. Jackson reassigned at that
11 time?

12 A. Yes.

13 Q. Okay. And who was her new supervisor?

14 A. Bret Paulk.

15 Q. And Mr. Paulk was also a project
16 engineer; correct?

17 (Off-the-record Discussion.)

18 A. Yes.

19 Q. And had Mr. Paulk taken Mr. Harville's
20 place?

21 A. That's correct.

22 Q. When Mr. Paulk became the project
23 engineer, did Ms. Jackson continue

1 doing the same duties that she was
2 doing when she was under Mr. Harville?

3 A. I believe so.

4 Q. How often did you see Ms. Jackson
5 performing her engineering assistant
6 duties?

7 A. Rarely.

8 Q. You say rarely. Do you recall any
9 occasion when you actually saw her
10 working?

11 A. Yes.

12 Q. Okay. What occasions do you recall
13 when you actually saw her working?

14 A. She was out on the Natchez Road
15 project.

16 Q. When was that?

17 A. I don't know the specific date.

18 Q. What had you gone out there for?

19 A. Just to review the project, the
20 process, and the -- where the status
21 of it was.

22 Q. Okay. And what was -- what was
23 Ms. Jackson doing on the project that

1 day?

2 A. I don't recall.

3 Q. Did you have any problem with how she
4 was doing her job that day?

5 A. I wasn't aware of any problems.

6 Q. Do you recall approximately what
7 season that was in? Was it in the
8 fall, the winter, or the spring?

9 A. It was probably late summer, early
10 fall maybe.

11 Q. Of 2006?

12 A. I'd -- I don't know. I believe so.

13 Q. It was about right after she started
14 working?

15 A. Yes, uh-huh.

16 Q. Apart from that time, did you ever
17 observe Ms. Jackson doing her job on
18 any other occasion?

19 A. Doing what?

20 Q. Doing her job.

21 A. Yes.

22 Q. When was that?

23 A. Another project, Coleman Dairy Road

1 project.

2 (Off-the-record Discussion.)

3 Q. How do you spell that?

4 (Off-the-record Discussion.)

5 A. C-O-L-E-M-A-N, D-A-I-R-Y, Road.

6 Q. And approximately what time frame was
7 that?

8 A. Oh, I don't know. I can't recall.

9 Q. Okay. What was she doing out there
10 that day?

11 A. I believe they were taking some
12 elevations.

13 Q. And what had you gone out there for?

14 A. They had a conflict with a junction
15 box grade.

16 Q. Who is they?

17 A. Bret Paulk, Andy Hoppes.

18 Q. Okay. So you didn't go out there for
19 anything relating to Ms. Jackson?

20 A. No.

21 Q. And did you observe her doing her work
22 that day?

23 A. No.

1 Q. All right. But you did see her out
2 there on the project?

3 A. Yes, correct.

4 Q. Did she seem to be doing her work and
5 doing it well?

6 A. When I was out there, they were
7 waiting for me to -- to make it out on
8 the job site to take a look at this.

9 Q. All right. Did --

10 A. So they weren't really doing anything
11 but waiting for me to take a look at
12 this junction box.

13 Q. Okay. Was she in -- was she involved
14 in that situation with the junction
15 box?

16 A. I believe she was helping Mr. Hoppes
17 with the elevations, shooting grades.

18 Q. Okay. Okay. Were there any other
19 times when you had occasion to see
20 Ms. Jackson doing her -- doing her
21 work?

22 A. I don't recall any.

23 Q. Who gave Ms. Jackson her performance

1 rating scores on her first performance
2 appraisal?

3 A. Mr. Paulk.

4 Q. Did you guys meet to discuss what
5 those scores were going to be?

6 A. Yes.

7 Q. Did you discuss scores for all the EAs
8 that he was rating at the time?

9 A. I may have not; I may have. I don't
10 know.

11 Q. Okay.

12 A. If I was available, yes, we would; if
13 not, then no.

14 Q. So you guys met especially to discuss
15 Ms. Jackson's scores?

16 A. No. She was just due for appraisal.

17 Q. Okay. So what was the -- where was
18 that meeting held, you and Mr. Paulk
19 talking about her scores?

20 A. I don't recall.

21 Q. Let's take a look at that appraisal.
22 It's been marked as Exhibit 6. Do you
23 recognize that document?

1 (Plaintiff's Exhibit 6 was
2 previously marked and is
3 not attached hereto.)

4 A. Yes.

5 Q. Okay. And are those your initials
6 next to Mr. Paulk's?

7 A. It is.

8 Q. And Ms. Jackson's work was rated as
9 meeting standards on this appraisal;
10 is that correct?

11 A. That's right.

12 Q. And she was rated as being
13 satisfactory in all her work habits?
14 The work habits are on the first page.

15 A. (Witness reviewing document.)

16 Yes.

17 Q. Okay. So she was satisfactory in her
18 compliance with ALDOT's rules?

19 (Off-the-record Discussion.)

20 A. As far as attendance, punctuality,
21 cooperation with co-workers,
22 compliance with rules, she was more
23 than satisfactory.

1 Q. Okay. So at that time, you guys felt
2 that Ms. Jackson has -- had complied
3 with ALDOT's rules enough to get a
4 satisfactory rating on this appraisal?

5 A. Based on Mr. Paulk, yes.

6 Q. So did Mr. Paulk say what ratings he
7 thought she should get, and then he
8 ran those by you?

9 A. We reviewed the items,
10 responsibilities and the ratings.

11 Q. Who determined that she should be
12 rated as satisfactory and in
13 compliance with the rules?

14 A. That would be Mr. Paulk.

15 Q. And by signing off on this performance
16 appraisal, putting your initials next
17 to his, are you saying that you agree
18 with that rating?

19 A. No.

20 Q. Did you disagree with it?

21 A. No.

22 Q. And did Mr. Paulk determine the
23 numerical ratings that Ms. Jackson

1 would get on Page 2 of the appraisal?

2 A. Yes.

3 Q. Do you know why -- Ms. Jackson didn't
4 draw or plot anything; is that right?

5 A. I don't know.

6 Q. Okay. We heard testimony from
7 Mr. Paulk yesterday that she didn't.
8 Do you know why she was rated as a 2
9 in "draws and plots?"

10 A. No.

11 Q. Do you know why she was rated as a 1
12 on the category of "performs?"

13 A. No, I'm not -- I'm not familiar. I
14 don't recall.

15 Q. And do you know why she was rated as a
16 1 in the category of "attends/passes?"

17 A. I believe she didn't pass her -- a
18 course.

19 Q. Which course was that?

20 A. Either math -- algebra course, math --
21 one of the two courses there.

22 Q. Okay.

23 A. Either math or algebra.

1 Q. Did she take other courses during the
2 time she was employed there before
3 this performance appraisal?

4 A. I'm not aware. I don't know.

5 Q. Okay. On the first page of the
6 appraisal in the section where it
7 starts, it is recommended that the
8 employee be, there's two Xs in front
9 of the line that says "continued in
10 the probation." Do you see that?

11 A. Yes.

12 Q. What was the reason that those two Xs
13 were placed there?

14 A. I don't know. They weren't placed by
15 me.

16 Q. Okay. Was Ms. Jackson continued on
17 probation after this performance
18 appraisal?

19 A. Yes.

20 Q. Okay. And this performance appraisal
21 was done at the end of her first six
22 months as an engineering assistant;
23 right?

1 A. Just prior to it.

2 Q. And the normal procedure is at the end
3 of six months of an engineering
4 assistant's first six months, there's
5 a determination made as to whether
6 they are going to become permanent
7 employees or whether they're going to
8 stay on probation, or whether they are
9 going to be let go; right?

10 A. It's prior to the six-month period.

11 Q. How much prior to?

12 A. Personnel forwards these documents to
13 the supervisors a couple weeks in
14 advance, if I remember. I believe.

15 Q. Like on this one, she was rated on --
16 Bret Paulk signed it on December 20th;
17 right?

18 A. Yes.

19 Q. Do you know if you initialed it that
20 same day?

21 A. I do not know.

22 Q. And Ms. Jackson also signed it on the
23 20th; right?

1 A. Yes.

2 Q. Is it likely that you would have
3 initialed it before Mr. Paulk signed
4 it?

5 A. Typically that's how we do that, yes.

6 Q. First you initial it, and then he
7 signs it?

8 A. First he signs it -- oh, I'm sorry.
9 First I initial it, then they meet
10 with them and then they sign it.

11 Q. All right. Do you recall whether you
12 initialed it before the day when they
13 met and got this thing signed?

14 A. No, I don't recall.

15 Q. Do you know how long before -- before
16 Mr. Paulk signed this that this
17 document was transmitted to him?

18 A. I'm sorry. Say again?

19 Q. Do you know how much time elapsed
20 between when this document was
21 transmitted to Mr. Paulk by personnel
22 and when he signed off on it?

23 A. No.

1 Q. And you say it's typically a couple
2 weeks?

3 A. Weeks, yes.

4 Q. Okay. And I'm sorry. I think you
5 said specifically a couple weeks
6 between the end of probationary period
7 and when they forward the documents;
8 is that right?

9 A. He gets it; the supervisors receive
10 the appraisal, the 13P, prior to
11 the -- prior to their coming off
12 probation.

13 Q. Okay. Now, Ms. Jackson's probation
14 was extended because she didn't pass
15 the -- one of the math classes; is
16 that right?

17 A. I believe that's correct.

18 Q. Is that reflected anywhere on this
19 document?

20 A. No.

21 Q. Okay. It's supposed to state their
22 reasons in the discipline -- excuse
23 me -- the "disciplinary actions" area

1 why she is being continued on
2 probation; right?

3 A. If there's disciplinary actions
4 applicable.

5 (Off-the-record Discussion.)

6 Q. Okay. So on this performance
7 appraisal, there weren't any
8 disciplinary actions applicable;
9 right?

10 A. No.

11 Q. Okay. So where was it stated the
12 reason that Ms. Jackson was being
13 extended in her probation?

14 A. I believe there was a memo.

15 Q. Do you know where that memo would have
16 been?

17 A. It would be in the personnel files.

18 Q. Was it attached to the performance
19 appraisal?

20 A. Oh, I don't know.

21 Q. Is there a written policy in the
22 9th Division that an employee that
23 doesn't pass their math automatically

1 gets their probation extended?

2 A. I don't know.

3 Q. Is there, in fact, a policy in the
4 9th Division, whether written or not,
5 that an employee that doesn't pass
6 math or algebra gets their probation
7 extended?

8 A. At that time, yes.

9 Q. Okay. When was that policy put into
10 place?

11 A. I -- I do not know.

12 Q. Was it a long time before Ms. Jackson
13 started?

14 A. I don't recall. I don't know when it
15 was.

16 Q. Is that policy still in effect today?

17 A. No.

18 Q. When did it stop?

19 A. I don't recall.

20 Q. Where did you hear about that policy?

21 A. Which policy?

22 Q. The policy that said that engineering
23 assistants who don't pass basic math

1 or algebra don't get to pass their
2 probationary period.

3 A. Who or when?

4 Q. When.

5 A. I don't recall.

6 Q. How did you hear about it?

7 A. From our division engineer.

8 Q. Did he say it in a meeting?

9 A. Yes.

10 Q. Okay. Did he ever issue any memos
11 about it?

12 A. I don't recall.

13 Q. And who was the division engineer at
14 that time?

15 A. Mr. Ronnie Poiroux.

16 Q. And he is no longer the division
17 engineer; right?

18 A. That's correct.

19 Q. How did you hear that that policy was
20 being eliminated?

21 A. I don't think it was eliminated.

22 Q. Okay. You told me a minute ago that
23 that policy is not still in effect

1 today; right?

2 A. Yes.

3 Q. Okay. When did it stop being in
4 effect?

5 A. That particular policy, I don't
6 recall.

7 Q. And how did you hear that it was not
8 in effect anymore?

9 A. Through an e-mail.

10 Q. Who was the e-mail from?

11 A. Ms. Jeanette Brown.

12 Q. What did the e-mail say?

13 A. I -- I'd have to look at the e-mail.

14 Q. Do you have it on your computer?

15 A. Probably.

16 Q. Is that computer in the building?

17 A. Yes.

18 Q. Who made the decision to have
19 Ms. Jackson continue on probation in
20 December of 2006?

21 A. I can -- I -- I'd have to look at the
22 memo.

23 Q. Okay. But it was something that a

1 decision had to be made about?

2 A. Yes.

3 Q. Okay. She -- she could have been made
4 permanent at that time; right?

5 A. Not in accordance with our policy.

6 Q. Okay. Then there's not really any
7 decision that would have needed to be
8 made then?

9 A. There shouldn't have been one, yeah.

10 Q. I'm going to show you what I'm marking
11 as Exhibit 16.

12 MR. SIMON: I'm sorry. I
13 don't have another copy
14 of it.

15 Q. If you will, look at the highlighted
16 portion of it. First, can you tell me
17 what that document is?

18 (The referred-to document was
19 marked for identification
20 as Plaintiff's Exhibit No. 16.)

21 A. It's an e-mail.

22 Q. And it's an e-mail you were copied on;
23 right?

1 A. Yes.

2 Q. Okay. And it says that somebody is
3 going to have to decide whether
4 Ms. Jackson was made permanent or not;
5 right, in the highlighted portion?

6 A. Yes.

7 Q. Okay. And who is it talking about
8 there?

9 A. Who is -- what, now? Say again?

10 Q. Who is it referring to that's going to
11 have to decide whether she gets made
12 permanent?

13 A. It appears to be the supervisor.

14 Q. Okay. So that would be Mr. Paulk?

15 A. It may be.

16 Q. Okay. If there was a policy in effect
17 that it was automatic that if she
18 didn't pass, she would stay on
19 probation, why was he having to decide
20 anything?

21 A. Well, I think -- I think it's
22 discussions regarding the extension of
23 probation.

1 Q. It doesn't say discussions. It says
2 decide there; right?

3 A. Yeah. This is to our training
4 coordinator.

5 Q. All right. And to you also; right?

6 A. She cc'd me.

7 Q. All right. So it's talking about
8 somebody having to make a decision
9 about whether she is going to be made
10 permanent or not; right?

11 A. In Jeanette's e-mail to Ms. Brown,
12 that's what she thinks.

13 Q. And Jeanette is --

14 A. The person -- the office engineer for
15 the division.

16 Q. Okay. Did she just get it wrong, that
17 there was going to have to be a
18 decision made?

19 A. She may have. I don't know.

20 Q. Who did make the decision to have
21 Ms. Jackson's probation be extended?

22 A. I'd have to look at the memo or the
23 recommendation. I think there was

1 one.

2 THE REPORTER: I didn't hear
3 you.

4 THE WITNESS: There was a
5 recommendation.

6 Q. Who made the recommendation?

7 A. I don't recall.

8 Q. Might it have been you?

9 A. I don't remember. I would have to
10 look at the files.

11 Q. Okay. Might it have been Mr. Paulk?

12 A. It could have been.

13 Q. How long have you been the district
14 engineer?

15 A. Approximately six years.

16 Q. Okay. Was that -- was the policy that
17 we've been talking about, was it in
18 effect when you became the district
19 engineer?

20 A. I don't know.

21 Q. As the district engineer, did any of
22 the inspectors who worked in your
23 chain of command ever not pass their

1 basic math and algebra by the end of
2 their probationary period like
3 Ms. Jackson did?

4 A. I don't recall.

5 Q. Do you recall an employee named
6 Trenton Lowery?

7 A. Yes.

8 Q. Do you know whether Mr. Lowery passed
9 his basic math and algebra before he
10 got made permanent?

11 A. I do not know.

12 Q. How about Dianna O'Rourke? Do you
13 know her?

14 A. Yes.

15 Q. Do you know if she passed those before
16 she was made permanent?

17 A. I don't know.

18 Q. Do you know Diana Clement?

19 A. Yes.

20 Q. Did she pass both before she was made
21 permanent?

22 A. I don't know.

23 Q. How about Debra Fletcher?

1 A. I know Debbie.

2 Q. Did she pass both before she was made
3 permanent?

4 A. I don't know.

5 Q. Belinda Powell?

6 A. Yes.

7 Q. Did she pass both?

8 A. I don't know.

9 Q. Blakely Yarbrough?

10 A. I don't know.

11 Q. Did he pass both before he was made
12 permanent?

13 A. I don't know.

14 Q. Do you know Lisa Champagne?

15 A. Yes.

16 Q. Did she pass both of those before she
17 was made permanent and was rehired?

18 A. I do not know.

19 Q. Do you know Kyle Clement?

20 A. Yes.

21 Q. Do you know if he passed both before
22 he was made permanent?

23 A. I do not know.

1 Q. Do you know Brandy Farrell?

2 A. Yes.

3 Q. Do you know if Brandy passed both
4 before she was made permanent?

5 A. I don't know.

6 Q. How about Samuel McNorton?

7 A. Yes.

8 Q. Did he pass both?

9 A. I don't know.

10 Q. Travis Crocker?

11 A. I don't know him.

12 Q. Do you know Phillip Presley?

13 A. Yes.

14 Q. Do you know if he passed both?

15 A. I don't know.

16 Q. Do you know Gene Blan?

17 A. Who.

18 Q. Gene Blan? B-L-A-N?

19 A. No, I don't think so.

20 Q. Do you recall ever having a request to
21 extend anybody's probation because
22 they didn't pass one of those courses,
23 besides Ms. Jackson?

1 A. I don't recall.

2 Q. But you do recall Ms. Jackson getting
3 her probation extended; right?

4 A. Yes.

5 Q. Prior to December of 2006 -- around
6 December 20th of 2006, had you had any
7 problems with Ms. Jackson's work
8 performance?

9 A. She did not work for me, so I wasn't
10 her immediate supervisor.

11 Q. Okay. Prior to December 20th, 2006,
12 were you aware of any problems with
13 Ms. Jackson's work performance?

14 A. No.

15 Q. Prior to December 20th, 2006, were you
16 aware of any problems with
17 Ms. Jackson's attendance?

18 A. No.

19 Q. Prior to her -- prior to
20 December 20th, 2006, were you aware of
21 any problems with Ms. Jackson's
22 punctuality?

23 A. I don't believe I recall any.

1 Q. Prior to December 20th of 2006, were
2 you aware of any problems with
3 Ms. Jackson's cooperation with
4 co-workers?

5 A. Yes.

6 Q. Okay. What problems were you aware
7 of?

8 A. She had an incident when she blew up
9 in the -- in the office with another
10 supervisor.

11 Q. Who was that?

12 A. Josh McElhenney.

13 Q. What was she concerned about at that
14 time?

15 A. It stemmed around her car.

16 Q. Getting scratched up?

17 A. Yes.

18 Q. And she claimed it had been
19 vandalized; is that right?

20 A. She said someone had scratched it
21 purposely.

22 Q. How did you get involved in that
23 situation?

1 A. She'd come to see me.

2 Q. What did -- what did she say when she
3 came to see you?

4 A. That her car was being scratched --
5 had been scratched.

6 Q. What did you do about the situation?

7 A. I looked at the car.

8 Q. Did you conclude that it had been
9 scratched?

10 A. No.

11 Q. There -- there were no scratches on
12 it?

13 A. It looked like normal -- normal wear
14 and tear.

15 Q. Normal wear and tear, okay. Did
16 Ms. Jackson get a written reprimand
17 for that, what you called a blowup?

18 A. No.

19 Q. When did that happen?

20 A. I don't recall the day. I would have
21 to look at the memos.

22 Q. Do you recall what month it happened?

23 A. October maybe.

1 Q. Was it within the time period of this
2 performance appraisal?

3 A. Yes.

4 Q. Okay. And even with that, what you
5 called a blowup, she was still rated
6 as having been satisfactory in her
7 cooperation with co-workers?

8 A. Yes.

9 Q. During the period of time encompassed
10 within this appraisal, did Ms. Jackson
11 exhibit any other problems with
12 cooperation with co-workers?

13 A. I'm not aware of any.

14 Q. She was -- during the period of her
15 employment up until December 20th,
16 2006, are you aware of any problems
17 with Ms. Jackson being compliant with
18 rules?

19 A. That one incident.

20 Q. She was not compliant with rules in
21 that one incident?

22 A. No.

23 Q. Which rules was she not compliant

1 with?

2 A. Disruptive behavior.

3 Q. Anything else?

4 A. Violence in the workplace.

5 Q. Was she violent in the workplace?

6 A. She exhibited a violent tendency
7 during that event.

8 Q. What violent tendency was that?

9 A. Made the statement that if no one
10 wanted to get hurt, they'd better
11 leave her car alone, if I recall.

12 Q. Did she threaten anyone personally?

13 A. I don't know.

14 Q. To your knowledge, she didn't; right?

15 A. I don't know.

16 Q. You don't know of her making any
17 personal threats, do you?

18 A. That was pretty personal.

19 Q. Who was she personal to?

20 A. She made it to -- to Josh McElhenney.
21 She advised all his office staff.

22 Q. She threatened Josh McElhenney with
23 that statement?

1 A. She had made it clear that Josh should
2 make it perfectly clear that he should
3 advise all of his personnel.

4 Q. Did Josh feel threatened by that
5 statement?

6 A. I do not know.

7 Q. Did you ask him?

8 A. No.

9 Q. Okay. And despite that incident,
10 Ms. Jackson was still rated as being
11 satisfactory in compliance with rules
12 for that time period; right?

13 A. Apparently.

14 Q. And she wasn't given any warnings for
15 that particular incident, was she?

16 A. She was given a counseling statement.

17 Q. Okay. Look on --

18 A. That one.

19 Q. Look on Page 2 of the performance
20 appraisal. Your lawyer just showed
21 you the counseling statement, but I'm
22 asking you to look at the performance
23 appraisal. Under disciplinary

1 actions, there's a zero under the
2 category of warnings; right?

3 A. Yes.

4 Q. Would that indicate that she got no
5 warnings during this probationary
6 period?

7 A. Yes.

8 Q. Okay. And there's no reprimands
9 either; right?

10 A. That's correct.

11 Q. So she had no reprimands during this
12 probationary period?

13 A. Yes.

14 Q. Okay. And she wasn't suspended;
15 right?

16 A. No.

17 Q. She did get a written counseling about
18 her behavior on October whatever it
19 was, 4th, 5th, or 6th or something;
20 right?

21 A. Yes.

22 Q. Who wrote that counseling form?

23 A. I did.

1 Q. And after you counseled her on that,
2 did she ever display any more
3 disruptive behavior?

4 A. I don't recall any additional
5 incidents.

6 Q. Since you've been the district
7 engineer, have there been any other
8 probationary engineering assistants
9 who have displayed disruptive behavior
10 that you know of?

11 A. I don't recall any. I really don't
12 know.

13 Q. Since you have been the district
14 engineer, to your knowledge, have
15 there been any other engineering
16 assistants besides Ms. Jackson who
17 have violated the work rule on
18 violence in the work place?

19 A. I don't remember.

20 Q. Are you aware that Ms. Jackson is
21 related to Bertha Alexander?

22 A. I believe by marriage.

23 Q. She's not married to her, is she?

1 A. No.

2 Q. How -- do you know how they are
3 related?

4 A. Daughter-in-law, I believe.

5 Q. When did you find out that they were
6 related?

7 A. I don't know.

8 Q. Was it during her first probationary
9 period up to December?

10 A. I don't recall.

11 Q. Do you recall how you found out?

12 A. No.

13 Q. And employees have to fill out a form
14 that says who they're related to at
15 the time they're hired; right? They
16 have to fill out a form that says who
17 they're related to at the DOT?

18 A. Which form are you talking about?

19 Q. I'm handing you what I've marked as
20 Exhibit 17. Do you recognize that
21 document?

22 (The referred-to document was
23 marked for identification

1 as Plaintiff's Exhibit No. 17.)

2 A. I believe it's in the new employees
3 document packets.

4 Q. And that's Ms. Jackson's copy of that
5 form; right?

6 A. I don't know if it's her copy or not.
7 I don't know.

8 Q. I'm sorry. I asked that poorly.
9 That's the relatives employed with the
10 Department of Transportation form for
11 Ms. Jackson; right?

12 A. It appears to be, yes.

13 Q. Okay. And on there, she identified
14 Bertha Alexander as her mother -- as
15 her mother-in-law?

16 A. Yes.

17 Q. And she dated that form July 3rd,
18 2006?

19 A. Yes.

20 Q. Is that the day she started?

21 A. I believe it is.

22 Q. Have you ever seen that form before?

23 A. I've seen the form, yes.

1 Q. Have you seen the one filled out by
2 Ms. Jackson before?

3 A. I don't recall seeing it, no.

4 Q. Shortly after Ms. Jackson received her
5 first probationary performance
6 appraisal, there was an incident that
7 happened about the tape recording
8 policy; is that right?

9 A. There is documentation on it, yes.

10 Q. When did you first become aware that
11 there was an issue about that?

12 A. That day.

13 Q. How did you become aware of it?

14 A. I believe -- I believe Mr. Paulk had
15 informed me.

16 Q. And how did he inform you?

17 A. I believe it was via telephone or
18 SouthernLINC.

19 Q. Where -- what did he tell you?

20 A. That Ms. Jackson was refusing to sign
21 the policy.

22 Q. Was that in the morning of
23 January 5th?

1 A. I don't know.

2 Q. Do you remember where you were when
3 you got that call?

4 A. I do not.

5 Q. What did you tell Mr. Paulk when he
6 told you that Ms. Jackson was refusing
7 to sign the policy?

8 A. I believe I was tied up, either
9 meeting or training, and I couldn't
10 attend to -- I couldn't address it,
11 and he needed to see Mr. Calametti to
12 discuss it.

13 Q. What kind of training were you tied up
14 in?

15 A. I don't recall. It may have not been
16 training.

17 Q. Was that the end of the conversation,
18 you telling him to go see Calametti?

19 A. It wasn't much more after that. I
20 think I was tied up with other issues,
21 other appointments, meetings, or
22 training. I was tied up that day when
23 this incident occurred.

1 Q. Did he tell you at that time the
2 reason that she was refusing to sign
3 the policy?

4 A. I don't recall.

5 Q. Did he tell you anything about the
6 meeting that they had had about it?

7 A. The meeting that morning?

8 Q. Yeah.

9 A. I don't recall.

10 Q. What was the next thing that you heard
11 about what had gone on that day with
12 regard to the policy and Ms. Jackson?

13 A. That Mr. Fresolone and a lot of
14 individuals had gotten involved
15 through this process the entire day.

16 Q. How did you hear about that?

17 A. I don't recall.

18 Q. All right. Let's back up a little
19 bit. On that day you get a call from
20 Bret Paulk saying that she had refused
21 to sign the policy, and you tell him
22 to talk to Calametti; right?

23 A. Yes. Because I was busy.

1 Q. Okay. What was the next thing that
2 you heard form anybody about what had
3 gone on that day?

4 A. That there was a lot of individuals
5 involved in trying to resolve this
6 matter.

7 Q. Okay. Did you hear about -- did you
8 hear anything more about it on that
9 particular day?

10 A. I don't recall.

11 Q. Did you meet with anybody about it on
12 that day?

13 A. I don't remember.

14 Q. Okay. That day -- that day was
15 January 5th of 2007; right?

16 A. I don't know. I don't know what day
17 it was really without the memos.

18 Q. Let's see. Here's one of the memos.
19 That's Plaintiff's Exhibit 8. Do you
20 recognize that document?

21 (Plaintiff's Exhibit 8 was
22 previously marked and is
23 not attached hereto.)

1 A. No, I do not.

2 Q. You never saw that document before?

3 A. I have never seen this document
4 before.

5 Q. I want you to look over it for a
6 minute and tell me if you can tell
7 what it is.

8 A. (Witness reading document.)

9 What was the question
10 again?

11 Q. Can you look at it and tell me what it
12 is?

13 A. It's a memorandum from Mr. Charly
14 Jones.

15 Q. Who is Mr. Jones?

16 A. Mr. Jones is -- he is currently one of
17 the assistant construction engineers
18 in the construction section.

19 Q. And it talks about some things that
20 happened on January 5th of 2007;
21 right?

22 A. That's correct.

23 Q. Does that refresh your recollection

1 that that was the day that the taping
2 policy incidents happened?

3 A. I don't know if that was the date that
4 he wrote the memo or -- I don't --
5 that's the first time I've seen this
6 memo.

7 Q. Take a look at Exhibit 15, if you
8 would, and tell me what that is.

9 (Plaintiff's Exhibit 15 was
10 previously marked and is
11 not attached hereto.)

12 A. (Witness reviewing document.)
13 It's a letter of
14 reprimand.

15 (Off-the-record Discussion.)

16 Q. And who's it to?

17 A. Ms. Jackson.

18 Q. And it's for the taping incident --
19 the taping policy incident; right?

20 A. It's for disruptive behavior,
21 insubordination, and refusal to
22 complete the policy form.

23 Q. Okay. And it says that that happened

1 on what day?

2 A. On January 5th.

3 Q. Does that refresh your recollection
4 now that that's the day that that
5 happened?

6 A. I don't know if that was the day it
7 happened. I wasn't involved in that
8 day. So I'm assuming, based off this
9 document, that was the day it had
10 occurred.

11 Q. Okay. Who wrote that letter of
12 reprimand?

13 A. Mr. Paulk.

14 Q. Did you have a hand in writing it?

15 A. I don't -- I don't recall.

16 Q. Did he run it by you before he gave it
17 to Ms. Jackson?

18 A. I believe he -- we had discussed the
19 letter of reprimand, but as far as him
20 running the letter by me, I don't
21 recall.

22 Q. What had y'all discussed about the
23 letter of reprimand?

1 A. I believe he was going to write the
2 letter of reprimand.

3 Q. Did you know what Ms. Jackson was
4 being reprimanded for?

5 A. Yes.

6 Q. What was she reprimanded for?

7 A. For disruptive behavior and
8 insubordination.

9 Q. Did you know that before the letter of
10 reprimand was written?

11 A. Did I know what before?

12 Q. Did you know that those were the
13 things that she was being reprimanded
14 for before that letter was written?

15 A. Yes.

16 Q. And who made the decision to reprimand
17 Ms. Jackson for the two things,
18 disruptive behavior and
19 insubordination?

20 A. I believe Mr. Calametti made that
21 decision.

22 Q. What makes you think that?

23 A. I believe we had discussed this --

1 this incident with Mr. Calametti.

2 Q. Who is we?

3 A. Mr. Paulk, myself, Mr. Calametti.

4 Q. Did you participate in the process of
5 reaching the decision that Ms. Jackson
6 would be reprimanded for disruptive
7 behavior and insubordination?

8 A. Did I what, now?

9 Q. Did you participate in the process?

10 A. I was in the discussions.

11 Q. What was your opinion about the
12 discipline that Ms. Jackson should get
13 as a result of the incidents on that
14 day, January 5th?

15 A. My opinion?

16 Q. Yeah.

17 A. Whether it was warranted or not?

18 Q. What was your opinion about what level
19 of discipline she should get for that
20 day?

21 A. I thought it was appropriate.

22 Q. So you agreed with Mr. Calametti's
23 decision to give her a written

1 reprimand?

2 A. I don't know if I agreed to it or not
3 at that time.

4 Q. But in principle you agreed with it;
5 right?

6 A. I thought it was appropriate.

7 Q. How long did y'all meet to discuss
8 what discipline was going to be given
9 to Ms. Jackson as a result of the
10 January 5th incidents?

11 A. I don't recall.

12 Q. Do you remember where the meeting was
13 held?

14 A. No.

15 Q. And as far as you can remember, there
16 were just three of you in there,
17 Mr. Paulk, yourself, and
18 Mr. Calametti?

19 A. There may have been Mr. Fresolone and
20 Mr. Malone as well.

21 Q. What were they doing in there?

22 A. What do you mean what were they doing?

23 Q. Why were they in that meeting?

1 A. I think it was discussion on this
2 incident.

3 Q. And why were they in there discussing
4 it?

5 A. I think they had direct involvement in
6 the incident.

7 Q. To your knowledge, what was
8 Mr. Malone's involvement in the
9 incident?

10 A. I don't recall.

11 Q. And do you know what Mr. Fresolone's
12 involvement was?

13 A. I believe it all --

14 (Off-the-record Discussion.)

15 A. I believe she went to Mr. Fresolone
16 concerning the incident.

17 Q. Okay. During the meeting that you had
18 with Mr. Paulk, Mr. Calametti,
19 Fresolone, and Malone about this
20 reprimand, did y'all discuss
21 Ms. Jackson's work performance?

22 A. I don't recall.

23 Q. Do you -- did you discuss

1 Ms. Jackson's previous disciplinary
2 history with the counseling form?

3 A. I don't remember.

4 Q. Did the fact that she had gotten the
5 previous written counseling, did that
6 play a role in deciding what level of
7 discipline she was going to get for
8 the January 5th incident?

9 A. I don't know.

10 Q. So Mr. Calametti would be the one who
11 would know the answers to that?

12 A. I believe so.

13 Q. During that meeting, did folks express
14 their opinions as to what the
15 appropriate level of discipline would
16 be for Ms. Jackson?

17 A. I'm sure they did.

18 Q. Do you remember what Mr. Fresolone
19 thought?

20 A. No, I don't remember.

21 Q. Do you remember what Mr. Malone
22 thought about that?

23 A. No, I do not.

1 Q. What did Bret Paulk think should be
2 done about that incident with
3 Ms. Jackson?

4 A. I don't recall.

5 Q. During that meeting, did y'all review
6 the memos that had been written about
7 what happened on January 5th?

8 A. I don't remember.

9 Q. Do you remember any occasion where you
10 reviewed those memos?

11 A. Concerning that incident?

12 Q. Yeah.

13 A. Yes.

14 Q. Okay. When did you do that?

15 A. Recommendation for termination.

16 Q. So prior to making the recommendation
17 for termination you think you hadn't
18 reviewed the memos about the incident
19 on January 5th?

20 A. Oh, I'm sure I had, yes.

21 Q. Do you think you reviewed them before
22 Ms. Jackson was reprimanded?

23 A. I don't know. I can't -- I don't

1 recall.

2 Q. Okay. I'm curious as to the Charly
3 Jones memo. Was that not included in
4 the materials that you had reviewed?

5 A. This is the first time I've seen this
6 memo.

7 Q. It's got a box on there that says
8 transportation office manager at the
9 top of it. Do you see that?

10 A. Which memo?

11 Q. The Charly Jones memo.

12 A. Yes.

13 Q. And in that box there's a big check
14 that says personnel file; is that
15 right?

16 A. Yes.

17 Q. What does that indicate?

18 A. That the office manager placed a copy
19 of this in her personnel file.

20 Q. In Ms. Jackson's personnel file?

21 A. Yes.

22 Q. Okay. When you were reviewing the
23 memos about what happened on

1 January 5th, did you review those from
2 Ms. Jackson's personnel file?

3 A. I don't recall.

4 Q. It could have been another group of
5 them collected somewhere?

6 A. It could have been.

7 Q. But whatever group of memos it was, it
8 didn't include this memo from Charly
9 Jones?

10 A. I don't recall this memo, no.

11 Q. When did you first become aware that
12 Ms. Jackson was so upset on that day
13 that she had gone to Mr. Fresolone's
14 office in tears?

15 A. I don't remember the time frame.

16 Q. Did you know about it before today?

17 A. That she went to Mr. Fresolone?

18 Q. Yeah.

19 A. Yes.

20 Q. And that she was crying when she went
21 there?

22 A. I wasn't aware that she was crying.

23 Q. Okay. The memo from Charly Jones says

1 she was; right?

2 A. It said -- she'd come upset and in
3 tears is what Mr. Jones' memo says.

4 Q. Is that -- is this the first time that
5 you are aware of her being in tears
6 that day?

7 A. I don't remember it.

8 Q. Do you know why she was in tears?

9 A. I guess, the incident from the
10 morning.

11 Q. Which incident was that?

12 A. Where she refused to sign the
13 recording policy.

14 Q. When she was meeting with Bret Paulk?

15 A. I don't know if it was before Bret or
16 with Bret or after Bret. I don't
17 remember.

18 Q. And are you aware of whether Bret
19 Paulk raised his voice with her during
20 the meeting that he had with her?

21 A. No.

22 Q. Did you ever ask anybody about that?

23 A. I don't remember asking anybody about

1 that.

2 Q. Are you aware that Mr. Fresolone had
3 to tell Mr. Paulk that he shouldn't
4 yell at Ms. Jackson anymore after
5 their meeting?

6 A. I believe it was mentioned.

7 Q. Do you remember where it was
8 mentioned?

9 A. No, I do not.

10 Q. Did Mr. Paulk get any kind of written
11 counseling for his conduct that day?

12 A. I don't recall any.

13 Q. Okay. You wouldn't disagree that
14 Mr. Paulk yelled at Ms. Jackson, would
15 you?

16 A. I wouldn't know.

17 (Off-the-record Discussion.)

18 Q. Who should Ms. Jackson have gone to
19 see with questions about the taping
20 policy?

21 A. Her supervisor.

22 Q. And that was Mr. Paulk; right?

23 A. That's correct.

1 Q. And if he couldn't give her answers to
2 her questions, then who should she
3 have gone to see about it?

4 A. She could come see me.

5 Q. Do you know if she tried to do that?

6 A. I don't know.

7 Q. Was there anything wrong with her
8 going to see Mr. Fresolone about the
9 memo?

10 A. Mr. Fresolone is not in the chain of
11 command.

12 Q. What was Mr. Fresolone's position at
13 the time?

14 A. He was assistant construction
15 engineer.

16 Q. So he would have been directly under
17 Mr. Calametti?

18 A. That's correct.

19 Q. And were you also directly under
20 Mr. Calametti?

21 A. No.

22 Q. Who was your supervisor?

23 A. Mr. Poiroux.

1 Q. So Mr. Poiroux supervises the district
2 engineers directly?

3 A. That's correct.

4 Q. They're not under the construction
5 engineers?

6 A. No.

7 Q. So Ms. Jackson, in going to see
8 Mr. Fresolone, violated the chain of
9 command?

10 A. Violated the chain of command? I
11 can't say that she did.

12 Q. That might not have been the words
13 that you used.

14 (Off-the-record Discussion.)

15 Q. She went outside the chain of command?

16 A. She should have utilized her chain of
17 command.

18 Q. You weren't available that day; right?

19 A. Yes.

20 Q. And Mr. Paulk had given her until the
21 end of the day to sign the policy;
22 right?

23 A. I believe his memo says that.

1 Q. So in your absence, who should she
2 have gone to see?

3 A. Mr. Calametti or Mr. Poiroux.

4 Q. Do you know if she attempted to go see
5 Mr. Calametti or Mr. Poiroux that day?

6 A. No.

7 Q. Was she disciplined for going outside
8 the chain of command?

9 A. I do not believe so.

10 Q. Apart from the incidents that happened
11 in October about Ms. Jackson's car and
12 in January about the taping policy,
13 did Ms. Jackson ever engage in any
14 other form of misconduct that you're
15 aware of?

16 A. She refused to sign her performance
17 appraisal.

18 Q. When did that happen?

19 A. I believe it was December.

20 Q. So that was her December 2006
21 performance appraisal?

22 A. I believe so.

23 Q. Tell me what happened on that

1 occasion.

2 A. Mr. Paulk had sat down with her to go
3 over her performance appraisal. She
4 didn't agree with it and informed him
5 that she didn't want to sign it and
6 then informed him that she wanted to
7 see me about it. So they came up to
8 my office.

9 Q. And you testified about that earlier;
10 right?

11 A. I don't believe we've talked about
12 that meeting, no.

13 Q. Okay. Maybe I'm confused. What
14 happened during that meeting?

15 A. We went over her appraisal. She
16 disagreed the -- with her appraisal,
17 and she -- she refused to sign her
18 appraisal.

19 Q. Okay. What happened at the end of the
20 meeting?

21 A. I had to call Mr. Calametti.

22 Q. And did he come to your office?

23 A. Yes, he did.

1 Q. And was Ms. Jackson still in there
2 when he got in there?

3 A. Yes.

4 Q. And what was the discussion when
5 Mr. Calametti got there?

6 A. Concerning her appraisal.

7 Q. Did she express concerns about her
8 appraisal?

9 A. She didn't agree with the appraisal.

10 Q. Okay. What didn't she agree with
11 about it?

12 A. I would have to see my memo to file on
13 it.

14 Q. You've got the appraisal in front of
15 you. I don't think I have your memo,
16 but looking at the appraisal, can you
17 tell what she didn't agree with?

18 A. No. Not without looking at it.

19 Q. She did eventually sign the
20 performance appraisal; right?

21 A. That's correct.

22 Q. And she signed it on the day that it
23 was presented to her?

1 A. I believe so.

2 Q. Was she insubordinate on that day?

3 A. Her refusal to sign the appraisal,
4 yes.

5 Q. But she did sign it on that day;
6 right?

7 A. Yes.

8 Q. Did she get any kind of counseling for
9 that refusal to sign?

10 A. I do not believe so.

11 Q. Did she get a verbal warning for
12 refusing to sign the performance
13 appraisal?

14 A. I believe in our meetings, I give her
15 a copy of the Department's policy on
16 signing appraisals; the policy of
17 discipline would be applied right then
18 and there. If she continued --

19 (Off-the-record Discussion.)

20 A. And if she still refused to sign them,
21 the policy of positive discipline or
22 progressive discipline would be
23 applied immediately.

1 Q. And she didn't have any progressive
2 discipline for not signing the policy;
3 right?

4 A. No. She requested to see
5 Mr. Calametti.

6 Q. Okay. And then she signed the policy;
7 right?

8 A. After discussions, yes.

9 Q. Are you aware that Ms. Jackson made a
10 complaint that on January 5th that
11 Mr. Paulk was discriminating against
12 her because of her gender?

13 A. No. Not at that time.

14 Q. Did you become aware of that later on?

15 A. Yes.

16 Q. When did you become aware of it?

17 A. Last week or this week.

18 Q. How did you become aware of it?

19 A. Mr. Redd had showed me her --

20 Q. Okay. You don't have to -- I don't
21 want to know anything --

22 MR. REDD: Don't tell him what
23 we talked about.

1 A. I was shown a copy of it.

2 Q. You were shown a copy of what?

3 A. Her grievance or complaint.

4 Q. Were you aware that during the -- in
5 the course of the meetings on
6 January 5th, Ms. Jackson made a
7 complaint that she was being
8 discriminated against, a verbal
9 complaint?

10 A. To who? I don't know who. To me?

11 Q. No. I don't believe it was to you. I
12 believe it was to Mr. Malone and
13 everybody that was sitting in the
14 meeting with her. Were you aware of
15 that?

16 A. I don't recall that.

17 Q. I show you what I have marked as
18 Exhibit 14 to your deposition. Do you
19 recognize that document?

20 (Plaintiff's Exhibit 14 was
21 previously marked and is
22 not attached hereto.)

23 A. (Witness reviewing document.)

1 I believe I do.

2 Q. Can you tell me what it is?

3 A. Apparently it's a memo to file.

4 Q. And who is it from?

5 A. Mr. Paulk.

6 Q. When did you first see this document?

7 A. I don't recall.

8 Q. Was it before Ms. Jackson got the
9 written reprimand on January 18th?

10 A. I don't remember.

11 Q. Did you review the memos like this one
12 from Mr. Paulk and the other employees
13 about the January 5th incident before
14 the written reprimand was issued?

15 A. I don't remember.

16 Q. Look at Page 2 of this memo. Right
17 about in the middle of the page it
18 says (as read:) Ms. Jackson also
19 stated that she felt threatened and
20 that I harassed and discriminated
21 against her due to the fact that she
22 was female.

23 Do you see that?

1 A. Yes.

2 Q. Okay. And that was something that she
3 said during this meeting where
4 Mr. Malone and Mr. Fresolone and a few
5 others were present; right?

6 A. I don't know if they were present or
7 not during that -- when she made that
8 statement.

9 Q. Okay. The next sentence says
10 Mr. Malone advised her that she should
11 read over the policies and
12 definitions; right?

13 A. Yes.

14 Q. That would indicate that Mr. Malone
15 was present when she made that
16 comment?

17 A. Yes.

18 Q. Do you know if ALDOT took any action
19 with regard to Ms. Jackson's complaint
20 that she was being discriminated
21 against because she was a female?

22 A. Actions? I'm not familiar with the
23 kind of actions -- not sure what type

1 actions.

2 Q. Do you know if ALDOT did any
3 investigation into those allegations?

4 A. As far as this particular incident, I
5 don't know.

6 Q. And you didn't direct anybody to
7 initiate any investigations as to
8 whether Mr. Paulk was discriminating
9 against Ms. Jackson because she's a
10 woman, did you?

11 A. No.

12 Q. When did you first become aware that
13 Ms. Jackson filed a formal grievance
14 against ALDOT?

15 A. Against ALDOT?

16 Q. That she filed a formal grievance
17 about her employment at ALDOT.

18 A. I don't recall.

19 Q. You testified earlier that you just
20 became aware last week of a grievance
21 that she filed; is that right?

22 A. That she actually filed with the EEOC.

23 Q. Would that be --

1 A. I don't know if she filed a previous
2 grievance or how many grievances.

3 Q. Let me show you what I have marked as
4 Exhibit 18 to your deposition. Is
5 that the grievance that you're
6 referring to?

7 (The referred-to document was
8 marked for identification
9 as Plaintiff's Exhibit No. 18.)

10 A. (Witness reviewing document.)

11 It may have been.

12 Q. And you say you first became aware of
13 her having that grievance last week?

14 A. I believe when I saw the document for
15 the first time was last week.

16 Q. Okay. Had you become aware before
17 last week of the fact that she had
18 filed a grievance?

19 A. I wasn't aware of it.

20 Q. Did -- did anybody from ALDOT ever
21 talk to you about Ms. Jackson's
22 grievance --

23 A. I don't recall.

1 Q. -- besides Mr. Redd?

2 A. I don't recall anybody talking to me
3 about it.

4 Q. Do you recall the human resources
5 employee named Sandra Deitz coming and
6 talking to you about Ms. Jackson?

7 A. As far as this -- for this grievance
8 or complaint?

9 Q. Yes.

10 A. I don't recall.

11 Q. Do you recall Ms. Deitz ever coming to
12 talk to you about Ms. Jackson?

13 A. I know she was involved in
14 discussions.

15 Q. What discussions was she involved in?

16 A. Termination discussions.

17 Q. And when was she involved in
18 termination discussions?

19 A. I don't recall.

20 Q. What was her involvement in those
21 discussions?

22 A. I don't remember.

23 Q. Okay. Were those discussions in

1 person, or were they over the phone?

2 A. I know there was one phone
3 conversation. I don't know if there
4 was any other in-person. I don't
5 recall.

6 Q. Okay. Was that phone conversation
7 just the two of you?

8 A. No.

9 Q. Who else was on that phone call?

10 A. Mr. Calametti, Ms. Brown, I believe
11 Mr. Fresolone, and Mr. Malone.

12 Q. Did that conversation occur after the
13 request to terminate Ms. Jackson had
14 been transmitted to Montgomery?

15 A. I'm sorry. Say it again.

16 Q. Did that conversation with Ms. Deitz
17 on the phone with all those other
18 people, did that occur after the
19 request for termination had been
20 transmitted to Montgomery?

21 A. No.

22 Q. It was before?

23 A. I believe so.

1 Q. What was the reason that y'all were
2 talking to Ms. Deitz at that time?

3 A. It was the termination process. I
4 think she was involved in the
5 discussions.

6 Q. Why would Ms. Deitz be involved in the
7 discussions about termination?

8 A. I don't recall.

9 Q. Who got her involved in those
10 discussions?

11 A. I believe Mr. Calametti.

12 Q. And you were the person who made the
13 initial recommendation to terminate
14 Ms. Jackson; is that right?

15 A. Yes.

16 Q. And Mr. Calametti got Ms. Deitz
17 involved after you made that initial
18 recommendation?

19 A. No.

20 Q. When did he get Ms. Deitz involved?

21 A. I don't recall.

22 Q. Was it before you made the initial
23 recommendation?

1 A. Yes.

2 Q. And Mr. Paulk was not involved in that
3 telephone call?

4 A. I don't remember.

5 Q. Where -- where did -- where did
6 that -- whose office did that call
7 take place in?

8 A. I don't remember. I don't recall
9 whose office it was.

10 Q. How long did the conversation last?

11 A. I don't remember how long it lasted.

12 Q. What was the reason that Mr. Calametti
13 wanted to call Ms. Deitz to involve
14 her in termination discussion?

15 MR. REDD: Object to the form.

16 You can answer.

17 THE REPORTER: I didn't hear
18 what you said.

19 MR. REDD: Object to the form.

20 I told him he could
21 answer.

22 A. Say again? What was the question
23 again?

1 Q. What was the reason that Mr. Calametti
2 wanted to get Ms. Deitz involved in
3 termination discussions about
4 Ms. Jackson?

5 MR. REDD: Object to the form.

6 A. I believe it was to discuss the
7 termination.

8 Q. So before you wrote the letter
9 recommending that Ms. Jackson be
10 terminated, y'all had a meeting that
11 Ms. Deitz was involved in where you
12 guys discussed terminating
13 Ms. Jackson; right?

14 A. I believe that's correct.

15 Q. Okay. And how long before you wrote
16 the letter did that meeting happen?

17 A. I don't remember.

18 Q. Was it weeks before? Was it days
19 before?

20 A. I don't recall.

21 Q. And during that meeting, did you
22 discuss the specific incidents that
23 had occurred with Ms. Jackson?

1 A. I believe so.

2 Q. And which incidents were discussed
3 during the meeting?

4 A. I don't recall.

5 Q. Did anybody -- did Ms. Deitz give her
6 approval for terminating Ms. Jackson?

7 MR. REDD: Object to the form.

8 You can answer.

9 A. I believe she concurred.

10 Q. Did y'all reach an agreement during
11 that meeting that Ms. Jackson should
12 be terminated?

13 A. I don't -- I don't remember.

14 MR. SIMON: Can we take a
15 quick break?

16 (Off-the-record discussion.)

17 (Brief recess was taken.)

18 Q. (By Mr. Simon:) We were talking about
19 Sandy Deitz being involved in some
20 termination discussions about
21 Ms. Jackson. Was anybody else on the
22 phone with Ms. Deitz?

23 A. I don't recall.

1 MR. REDD: You mean on her
2 end?

3 MR. SIMON: Yeah, on her end.

4 A. Oh, I don't recall.

5 Q. Do you know if Ron Green was there?

6 A. I don't remember.

7 Q. Is that the typical process when
8 you -- when there's about to be a
9 recommendation for termination to get
10 somebody from Sandy Deitz' office
11 involved?

12 A. Not necessarily.

13 Q. Do you know why her office was
14 involved, or why she was involved in
15 this?

16 A. No.

17 Q. But that's not something that would be
18 usual?

19 A. It's something that wouldn't be
20 unusual.

21 Q. Okay. Her office is the Human
22 Resources Bureau; right?

23 A. Is what, now?

1 Q. The Human Resources Bureau?

2 A. Oh, I'm not sure what her -- what
3 bureau she's in.

4 Q. Do you know what her job is with the
5 Department?

6 A. I think she is Title 7 section, I
7 believe.

8 Q. And Title 7 is the employment
9 discrimination law; right?

10 A. I believe so.

11 Q. Why would the -- why would the Title 7
12 coordinator be involved in the
13 discussions of terminating
14 Ms. Jackson?

15 A. I don't know.

16 Q. Did Ms. Deitz ask any questions during
17 the call?

18 A. I don't remember any questions.

19 Q. When y'all had that meeting, did you
20 discuss Ms. Jackson's issues of having
21 been assigned by herself to different
22 job sites?

23 A. I don't know.

1 Q. Do you remember talking about
2 Ms. Jackson being assigned to
3 accompany Chris Burdette to different
4 project sites?

5 A. I don't remember that.

6 Q. Was that the only conversation that
7 you can recall having with Ms. Deitz
8 about Ms. Jackson?

9 A. No. I think there was another
10 discussion when she was involved.

11 Q. Okay. What was that other discussion?

12 A. I believe she was involved with our
13 telephone conference with the
14 assistant director.

15 Q. When did that happen?

16 A. I don't recall.

17 Q. What was the purpose of the telephone
18 conference with the assistant
19 director?

20 A. To discuss the termination.

21 Q. Okay. And the assistant director is
22 Mr. Morris; right?

23 A. I believe he is one of the assistants,

1 yes.

2 Q. Is he the -- is that the assistant
3 director who was involved in that
4 discussion?

5 A. Yes.

6 Q. And did -- the discussion where
7 Mr. Morris was involved, did that take
8 place before or after the other
9 conversations with Ms. Deitz?

10 A. I believe it was after.

11 Q. And what was the purpose of the
12 discussion with Mr. Morris?

13 A. To try to make a determination.

14 Q. As to --

15 A. Termination.

16 Q. Was a determination made at that time?

17 A. I believe it was.

18 Q. And what was the determination?

19 A. To go ahead and go forth with the
20 termination.

21 Q. And was that before you wrote the
22 letter recommending termination or
23 after?

1 A. That was before.

2 Q. Who was involved in the meeting with
3 Mr. Morris?

4 A. Mr. Calametti, Ms. Brown, myself, and
5 I believe Mr. Malone and Ms. Deitz.

6 Q. Where did that meeting take place?

7 A. In this building.

8 Q. Do you remember whose office it was
9 in?

10 A. It was in that office right there
11 (indicating).

12 Q. The conference room next door?

13 A. The conference room next door, the
14 small conference room.

15 Q. Do you remember how many days before
16 you wrote your termination
17 recommendation letter that
18 conversation took place?

19 (Off-the-record Discussion.)

20 A. I don't remember how many days it was.

21 Q. Would it have been within a week's
22 time frame?

23 A. I don't recall. It was shortly

1 thereafter.

2 Q. What was the information that you
3 shared with Mr. Morris during that
4 meeting?

5 A. I don't recall.

6 Q. Did you discuss Ms. Jackson's actions
7 on October 4th?

8 A. I don't know if that was discussed or
9 not at that time.

10 Q. Did you discuss Ms. Jackson's conduct
11 on January 5th?

12 A. I don't remember if that was discussed
13 either.

14 Q. Did you discuss the quality of
15 Ms. Jackson's work performance?

16 A. I do not believe that was discussed.

17 Q. But at the end of the meeting,
18 Mr. Morris concurred with the
19 recommendation that Ms. Jackson be
20 terminated?

21 A. I don't know if he concurred with any
22 recommendation. I think he made the
23 decision.

1 Q. Mr. Morris made the decision that
2 Ms. Jackson should be terminated?

3 A. I believe so.

4 Q. Did he then direct you to write the
5 termination recommendation?

6 A. No.

7 Q. How was it decided that you were going
8 to be the one to write the
9 recommendation?

10 A. Mr. Calametti.

11 Q. Mr. Calametti told you to do that?

12 A. Yes.

13 Q. Did Mr. Calametti tell you which
14 incidents to put in the termination
15 recommendation -- that were going to
16 be the basis for the termination?

17 A. No.

18 Q. Did Mr. Morris say what incidents
19 should be included in there?

20 A. No.

21 Q. Were you the person who decided which
22 incidents you were going to refer to
23 in your letter recommending

1 termination?

2 A. We had others. I had drafted a
3 termination letter and reviewed it
4 with Mr. Calametti.

5 Q. Okay. So you and Mr. Calametti put
6 that letter together, both of you
7 together?

8 A. I put it together. He reviewed it.

9 Q. Did he make any changes to it?

10 A. I do not believe so.

11 Q. Do you know on what basis Mr. Morris
12 decided to terminate Ms. Jackson?

13 A. I don't know what you mean by basis.

14 Q. Do you know why Mr. Morris decided to
15 terminate Ms. Jackson?

16 A. I can only assume that it was based
17 off the incidents.

18 Q. But you don't know?

19 A. Ultimately, no.

20 Q. You don't know whether it was because
21 of what happened on October 4th?

22 A. No.

23 Q. You don't know whether it was because

1 of what happened on January 5th?

2 A. I would say it would be a collection
3 of all the incidents.

4 Q. But you are guessing at this point
5 because you don't know what's in
6 Mr. Morris' mind, do you?

7 A. No. I didn't particularly ask him
8 that.

9 Q. Do you know whether Ms. Jackson's work
10 performance was considered in the
11 termination decision?

12 A. I don't know.

13 Q. You don't really know what factors
14 were considered in the termination
15 decision, do you?

16 MR. REDD: Object to the form.

17 A. I know that the incidents were
18 considered.

19 Q. Because they were discussed during the
20 phone call?

21 A. I don't know if they were discussed
22 during the phone call.

23 Q. Then how do you know the incidents

1 were considered?

2 A. I believe he was aware of the
3 incidents by Ms. Deitz.

4 Q. But you don't have personal knowledge
5 that those incidents were the reason
6 that Mr. Morris decided to terminate
7 Ms. Jackson, do you?

8 A. No.

9 Q. Did he ever say that?

10 A. I don't recall.

11 Q. Apart from the two telephone
12 conferences that you have talked to us
13 about where Ms. Deitz was present, did
14 you have any other conversations with
15 Ms. Deitz about Ms. Jackson?

16 A. I don't remember others -- any others.

17 Q. Let me show you what I've marked as
18 Exhibit 19 to your deposition. Do you
19 recognize that document?

20 (The referred-to document was
21 marked for identification
22 as Plaintiff's Exhibit No. 19.)

23 A. (Witness reviewing document.)

1 I don't recall it.

2 Q. Let me ask you to look at the last
3 page. It's signed by Sandra M. Deitz;
4 right?

5 A. Yes.

6 Q. And it's dated February 14th?

7 A. Yes.

8 Q. Do you remember talking to Ms. Deitz
9 about Ms. Jackson's grievance prior to
10 February 14th?

11 MR. REDD: Object to the form.

12 A. I don't remember.

13 Q. Let me ask you to look at the second
14 page. At the top of the page it says
15 (as read:) According to Vince
16 Calametti, division construction
17 engineer; Jay Palmer, district
18 engineer; and Bret Paulk, project
19 engineer, it is common for new
20 inexperienced EAs to be assigned to
21 observe job tasks being performed on
22 different project sites as part of
23 on-the-job training.

1 Did you tell Ms. Deitz
2 that?

3 A. I don't remember. I don't remember
4 telling her that.

5 Q. Are you saying you didn't tell her
6 that?

7 A. I don't remember it.

8 Q. Do you remember having a conversation
9 with Ms. Deitz where you talked about
10 what was common for inexperienced EAs?

11 A. I don't remember if it was Sandy. I
12 don't recall.

13 Q. Did y'all -- did you talk to anybody
14 else about that?

15 A. I don't recall.

16 Q. Bret Paulk testified yesterday, I
17 believe, that Ms. Deitz came down and
18 met with him and you and Mr. Calametti
19 in person concerning Ms. Jackson.
20 Does that not square with your
21 recollection?

22 A. I just don't remember. I remember
23 talking to Sandy.

1 Q. Do you remember talking to her about
2 the things that she's saying you
3 talked about in this investigation
4 report?

5 A. I can only assume, yes, that's what we
6 talked about.

7 Q. And do you remember if that
8 conversation was an in-person meeting
9 or whether it was one of these two
10 telephone conferences that you've been
11 telling me about already?

12 A. I don't know if it was via telephone
13 or in person. I don't remember.

14 Q. During the first telephone conference
15 with Ms. Deitz where y'all were
16 discussing Ms. Jackson's termination,
17 did you talk about the things
18 referenced in Ms. Deitz's
19 investigative findings?

20 MR. REDD: Which things? All
21 of them?

22 MR. SIMON: The ones at the
23 top of Page 2.

1 A. I don't recall talking -- I don't
2 remember. We may have.

3 Q. Now, Ms. Deitz submitted this
4 investigation report on February 14th,
5 2007; right?

6 A. I don't know when it was submitted.

7 Q. There's several signatures on the last
8 page. I was hoping you could help me
9 figure out who they are. There's the
10 word "approved" in handwriting on the
11 bottom of that page. Do you see that?

12 A. Yes.

13 Q. And do you know whose signature that
14 is next to the word "approved?"

15 A. No, I have no idea.

16 Q. Could it be Ron Green's?

17 A. I don't know. It could be, I guess.
18 I don't know. It could be Ron Greer
19 too.

20 Q. Does Mr. Green still work at the DOT?

21 A. I don't know. I assume he does.

22 Q. You know who he is; right?

23 A. Yeah.

1 Q. The other approval on here, that's Dan
2 Morris; right?

3 A. I don't know. I don't know if that's
4 his signature or not. I don't know.

5 Q. Okay. Did you ever receive a copy of
6 this document?

7 A. No.

8 Q. This is the first time you're seeing
9 it?

10 A. It may be. I don't recall. There's a
11 lot of documents, and I don't know if
12 this -- I've seen this one or not.
13 But typically I would not get a copy
14 of that.

15 Q. Apart from the telephone conference
16 that we just talked about where
17 Mr. Morris was involved, did you have
18 any other discussions with Mr. Morris
19 about Ms. Jackson?

20 A. No. Just that one -- one
21 conversation.

22 Q. And you only had those two
23 conversations with Ms. Deitz, that you

1 can recall, about Ms. Jackson; right?

2 A. Those are the only -- apparently
3 this -- this one report, or
4 investigation report where she says
5 she talked to me about it. I just
6 don't know.

7 Q. That one you don't recall?

8 A. I don't recall that. No, I sure
9 don't.

10 Q. Do you recall any other conversations
11 that you had with Ms. Deitz about
12 Ms. Jackson?

13 A. No.

14 Q. In what way was Ms. Jackson
15 insubordinate on January 5th?

16 A. I need to look at that memo again,
17 review it.

18 Q. Which one?

19 A. The January 5th.

20 Q. The one from -- the one that Bret
21 Paulk wrote or the one that Charly
22 Jones wrote?

23 A. It's the one that Joey Fresolone

1 wrote.

2 Q. Let me show you what I've marked as
3 Plaintiff's Exhibit 20. Is that the
4 memo that you're talking about from
5 Joey Fresolone?

6 (The referred-to document was
7 marked for identification
8 as Plaintiff's Exhibit No. 20.)

9 A. Yes.

10 Q. Take a minute to look at that and let
11 me know what she did that was
12 insubordinate.

13 A. (Witness reviewing document.)

14 Okay. What was the
15 question?

16 Q. In what way was Ms. Jackson
17 insubordinate on January 5th?

18 A. I believe her initial request to sign
19 the recording policy.

20 Q. You mean her initial refusal to sign
21 it?

22 A. I mean her initial refusal, that's
23 correct.

1 Q. So her telling Bret Paulk that she
2 wasn't going to sign it was
3 insubordinate?

4 A. Her telling Bret she wasn't going to
5 sign it, yes, was insubordinate to me,
6 yes.

7 Q. Okay. Was there anything else she did
8 that day that was insubordinate?

9 A. I believe she told Joey she -- she
10 didn't want to sign it.

11 Q. She did sign it by the end of the day;
12 right?

13 A. I believe that's correct.

14 Q. And that was the deadline that
15 Mr. Paulk gave her; right?

16 A. I don't know if that was the deadline
17 that he gave her. I believe that was
18 the deadline after all the drama had
19 occurred.

20 Q. Take a look at Plaintiff's Exhibit 2.
21 Do you know if this is the meeting
22 that was in the morning that Josh
23 McElhenney sat in on, the first

1 meeting?

2 (Plaintiff's Exhibit 2 was
3 previously marked and is
4 not attached hereto.)

5 A. I believe so.

6 Q. Okay. And it says in here that Bret
7 stated that she had until the end of
8 the day to sign the policy during that
9 first meeting that they had; right?

10 A. She told Bret that she would sign it
11 at the end of the day and that he
12 could not make her sign it.

13 Q. And then it says that he then stated
14 that she had until the end of the day
15 to sign it; right?

16 A. That's Josh's memo, yes.

17 Q. Yeah. Okay. And that's Josh's memo
18 about what Bret told her; right?

19 A. I'm sorry. Say again.

20 Q. That's Josh's memo about what Bret
21 told her during that first meeting of
22 the day; right?

23 A. I believe so.

1 Q. So it wasn't after all the drama of
2 the day that she was given that
3 deadline; it was at that first
4 meeting; right?

5 A. Say the question again.

6 Q. It wasn't after all the drama of the
7 day, as you said. It was --

8 A. No -- after all the -- I'm sorry.

9 Q. It was actually during that first
10 meeting with Mr. McElhenney and Paulk
11 that she was told she had until the
12 end of the day to sign it; right?

13 A. In Josh's memo, that's what he states.

14 Q. So at what point was she insubordinate
15 for just not signing the memo?

16 A. Her initial refusal to sign the memo
17 and the statement that -- that he
18 could not make her sign it.

19 Q. And then she did sign it by his
20 deadline; right?

21 A. I don't know if she signed it before
22 the deadline or after. She signed it
23 that day, yes.

1 Q. Did she sign it after the end of that
2 day?

3 A. I don't know.

4 Q. Was Ms. Jackson's conduct in
5 Mr. Fresolone's office insubordinate?

6 A. It could have been borderline.
7 Mr. Paulk had given her until the end
8 of the day. And she stated that the
9 cover letter stated until the 16th as
10 indicated in the letter.

11 Q. And it did state that, didn't it?

12 A. I don't know. I don't recall.

13 Q. If it had stated that, then it
14 wouldn't have been insubordinate for
15 her to bring it up, would it?

16 A. If her supervisor told her to sign it
17 that day, then, yes, it would.

18 Q. And again, she did sign it that day;
19 right?

20 A. Yes.

21 Q. So what was the reason that
22 Ms. Jackson was reprimanded for the
23 incidents of January 5th?

1 A. I don't know. I would have to see the
2 letter of reprimand.

3 Q. I think you've got it there, don't
4 you?

5 A. Do I?

6 Disruptive behavior and
7 insubordination for refusal to sign
8 the policy form.

9 Q. Anything else?

10 A. It was also noted that she left her
11 job station without permission.

12 Q. Was she given a written reprimand for
13 that?

14 A. I do not know.

15 Q. Did Ms. Jackson engage in any
16 misconduct after January 5th, 2007?

17 A. I don't recall any other.

18 Q. Let me see Mr. Fresolone's letter that
19 I just gave you.

20 A. (Witness complies.)

21 Q. And Mr. Fresolone's letter also
22 indicates that Ms. Jackson was upset
23 that morning, doesn't it?

1 A. Yes.

2 Q. Here it states that she was visibly
3 upset; right?

4 A. I can't --

5 Q. Oh, I'm sorry.

6 A. Visibly upset, yes.

7 Q. Visibly very upset?

8 A. Yes.

9 Q. Had you seen this memo from
10 Mr. Fresolone before today?

11 A. Yes.

12 Q. Okay. So you knew before today that
13 Ms. Jackson had been visibly very
14 upset at the -- at that first meeting
15 with Mr. Fresolone?

16 A. Joey claimed that she was visibly
17 upset, yes.

18 Q. Did you have any reason to disbelieve
19 it?

20 A. No.

21 Q. And that squares with Charly Jones'
22 recollection of the events too; right?

23 A. I'm sorry?

1 Q. And that squares with Charly Jones '
2 version of the events too; right?

3 A. It does.

4 Q. Who was the -- who was the first
5 person who made any kind of
6 recommendation that Ms. Jackson be
7 terminated?

8 A. I don't recall.

9 Q. How did you first hear about the
10 possibility that Ms. Jackson might be
11 terminated?

12 A. How did I?

13 Q. Yeah.

14 A. I believe it was conversations --

15 Q. With --

16 A. -- concerning this written reprimand.

17 Q. Okay. Who were the conversations
18 with?

19 A. Mr. Calametti.

20 Q. Anybody else?

21 A. I believe Mr. Paulk.

22 Q. So you and Mr. Paulk discussed
23 terminating Ms. Jackson?

1 A. No. I believe we looked at all the
2 options as far as disciplinary steps.

3 Q. And you decided to give her a written
4 reprimand; right?

5 A. I believe Mr. Calametti did, yes.

6 Q. So when -- when was it first suggested
7 that she be terminated after she
8 received this written reprimand?

9 A. I don't know.

10 Q. Do you know who first suggested it?

11 A. I don't recall.

12 Q. Was it Mr. Morris?

13 A. After the reprimand?

14 Q. Yeah.

15 A. I don't believe so.

16 Q. Was it Ms. Deitz?

17 A. I don't believe so.

18 Q. Was it Mr. Calametti?

19 A. I don't -- I don't know.

20 Q. Was it Mr. Poiroux?

21 A. I don't know.

22 Q. Was it you?

23 A. I concurred.

1 Q. So you concurred with somebody
2 else's --

3 A. I concurred with the discussions of
4 termination.

5 Q. When did the first discussion of
6 termination happen after the written
7 reprimand was given?

8 A. I don't remember.

9 Q. Who was present during those
10 discussions about terminating
11 Ms. Jackson after the written
12 reprimand was given?

13 A. I believe it was me, Mr. Calametti,
14 Mr. Paulk. There may have been
15 others.

16 Q. Give me an idea as to how long after
17 the written reprimand was given that
18 y'all sat down and discussed the
19 possibility of terminating
20 Ms. Jackson.

21 A. I have no idea.

22 Q. Who first brought up the subject?

23 A. I don't remember who.

1 Q. Did y'all meet specifically to discuss
2 terminating Ms. Jackson?

3 A. I don't believe so.

4 Q. Was it just water cooler conversation,
5 hey, I think we ought to let her go?

6 A. No.

7 Q. Was it a meeting that somebody
8 convened?

9 A. I don't recall.

10 Q. Where did that first discussion with
11 you, Mr. Paulk, and Mr. Calametti take
12 place?

13 A. Where?

14 Q. Yeah.

15 A. I don't recall.

16 Q. Did you guys look at any documents
17 during that meeting?

18 A. I don't remember.

19 Q. Did Mr. Paulk ever make a suggestion
20 that Ms. Jackson be terminated?

21 A. I don't remember if he did or not.

22 Q. Let's talk about just during that
23 first meeting. You don't remember

1 where it happened; is that right?

2 A. I'm sure it was in the division.

3 Q. You don't remember how long it lasted?

4 A. No.

5 Q. You don't remember who was there?

6 A. Yes, I do.

7 Q. Okay. Was it just -- was it just the
8 three of you?

9 A. I know it was the three of us.

10 Q. You said there may have been others?

11 A. There may have been others,
12 Mr. Malone, Mr. Fresolone.

13 Q. And had you gathered to talk about
14 stuff other than terminating
15 Ms. Jackson?

16 A. I don't recall if we gathered to talk
17 about other stuff. No, I don't recall
18 that.

19 Q. So tell me what was said during the
20 conversation.

21 A. I believe it was a discussion to
22 decide what we were going to do as far
23 as disciplinary steps, either written

1 reprimand or termination.

2 Q. Okay. I thought you said that this
3 conversation occurred after she got
4 the written reprimand?

5 A. No. I think it was before.

6 Q. Okay.

7 A. That was our discussions on what steps
8 of discipline to take.

9 Q. Okay. I understand. I may have been
10 confused.

11 A. I may have been confused. I don't
12 know.

13 Q. Okay. Let's get on the same page for
14 a minute. So you and Mr. Paulk and
15 Mr. Calametti and maybe others met to
16 discuss what would be the appropriate
17 discipline to take for the incidents
18 of January 5th?

19 A. I believe so.

20 Q. Okay. And that was before she got the
21 written reprimand; right?

22 A. Yes.

23 Q. And maybe somebody during that meeting

1 threw out the idea that she should be
2 terminated; right?

3 A. Yes.

4 Q. Okay. But that was decided -- you
5 guys decided not to do that; right?

6 A. That was the decision, yes.

7 Q. And instead you decided to issue her a
8 written reprimand; right?

9 A. Yes.

10 Q. Okay. And so Mr. Paulk was given the
11 job of writing the reprimand; right?

12 A. That's correct.

13 Q. Okay. And then we've already figured
14 out that later on you went over that
15 written reprimand with him?

16 A. Yes.

17 Q. And then Ms. Jackson got the written
18 reprimand; right?

19 A. Yes.

20 Q. All right. That was -- that was done;
21 right?

22 A. Yes.

23 Q. And that concluded the disciplinary

1 process for the stuff that happened on
2 January 5th; right?

3 A. I believe so.

4 Q. After Ms. Jackson got that written
5 reprimand, when after that was the
6 first discussion about terminating
7 her?

8 A. I don't recall.

9 Q. After Ms. Jackson got that written
10 reprimand, when was the first time
11 that you can remember hearing that
12 somebody had suggested or spoken about
13 terminating Ms. Jackson?

14 A. Can you say that again?

15 Q. Yeah, yeah. After the written
16 reprimand, when was the first time
17 that you can remember somebody
18 bringing up the subject of terminating
19 Ms. Jackson?

20 MR. REDD: Asked and answered.

21 A. I don't remember when the first time
22 was.

23 Q. At some point Ms. Jackson was

1 transferred from -- from -- out from
2 under Bret Paulk's supervision; right?

3 A. She was moved, yes.

4 Q. She was moved to under Tony Cooper?

5 A. That's correct.

6 Q. And what was the reason that she was
7 moved there?

8 A. I don't know. You would have to talk
9 to Mr. Calametti about that. He made
10 that decision.

11 Q. So you're not aware that Ms. Jackson
12 was transferred because she had some
13 work restrictions as a result of being
14 pregnant?

15 A. What was the question again, now?

16 Q. You're not aware that Ms. Jackson was
17 transferred because she had work
18 restrictions resulting from her being
19 pregnant?

20 A. I don't know if that was the specific
21 reason why she was transferred.

22 Q. Let me show you what's been marked as
23 Exhibit 11. That's a memo to you from

1 Mr. Calametti; right?

2 (Plaintiff's Exhibit 11 was
3 previously marked and is
4 not attached hereto.)

5 A. (Witness reading document.)

6 Q. Is that right?

7 A. Yes.

8 Q. And it asks you to revise her Form 13
9 and Form 40 to reflect her new duties;
10 right?

11 A. Yes.

12 Q. And it says she is being assigned
13 those temporary duties throughout her
14 pregnancy; right?

15 A. Yes.

16 Q. Okay. And then the new Form 40 shows
17 her working under Tony Cooper; right?

18 A. I would have to look at that Form 40.
19 Yes.

20 Q. Can you tell from this memo that she
21 was being transferred to Mr. Cooper so
22 that she could perform these temporary
23 duties throughout her pregnancy?

1 A. This is not actually a transfer
2 letter. This is just her new duties
3 and a new supervisor.

4 Q. Do you know if she ever got a transfer
5 letter?

6 A. I don't know if she got a transfer
7 letter or not.

8 Q. But typically when you transfer
9 somebody from one project engineer to
10 another, you give them a transfer
11 letter; right?

12 A. Not necessarily. If it's short
13 duration, no, we wouldn't.

14 Q. Okay. So would the duration of her
15 pregnancy, would that be considered a
16 short duration?

17 A. Nine months? Not necessarily, no. We
18 could -- we could work her temporarily
19 in another office during that period,
20 yes.

21 Q. So she might not have gotten a
22 transfer letter then?

23 A. I don't know if she got one or not. I

1 don't know if I wrote a transfer
2 letter or not on it.

3 Q. But you did prepare a new Form 40 for
4 her; right?

5 A. No, I did not.

6 Q. Someone did; right?

7 A. Yes. Should have.

8 Q. Let me show you what I've marked as
9 Exhibit 21. Is that the new Form 40?

10 (The referred-to document was
11 marked for identification
12 as Plaintiff's Exhibit No. 21.)

13 A. It appears to be.

14 Q. And the supervisor who signed it, is
15 that Tony Cooper's signature there?

16 A. Yes.

17 Q. And it's also got another signature
18 below his. Whose signature is that?

19 A. It should be the appointing authority.

20 Q. Okay. And the appointing authority
21 signed off on it in March of '07,
22 March 5th?

23 A. It looks like it was initialed.

1 Q. Do you know why there would be such a
2 long gap between when the supervisor
3 signed it and when the appointing
4 authority signed it?

5 A. There's a long gap all the time when
6 document -- you send up paperwork to
7 Montgomery for signatures.

8 Q. All right. Now, February 13th, 2007,
9 is when you got the letter from
10 Mr. Calametti saying that she's being
11 reassigned; right?

12 A. That's on his memo; that's correct.

13 Q. Now, was it before or after you
14 learned about her being reassigned
15 that there started to be discussions
16 about terminating her?

17 A. Oh, I don't know. I don't recall.

18 Q. Okay. Your termination recommendation
19 was done on February 22nd, I believe;
20 is that right?

21 A. That's correct.

22 Q. And you're looking at the copy there
23 that your lawyer showed you?

1 A. Yes.

2 Q. So at some point in between
3 February 13th when you learned that
4 Ms. Jackson was transferred and
5 February 22nd, there was a decision
6 made that Ms. Jackson should be
7 terminated; right?

8 A. Oh, I don't know if it was between
9 those dates or not.

10 Q. So it may have been before she was
11 transferred?

12 A. It may have been.

13 Q. Why would you transfer somebody that
14 was going to be terminated?

15 A. It may be a possibility to diffuse the
16 situation if the tensions are high.

17 Q. Were there any tensions?

18 A. Oh, there was some tension in the
19 office.

20 Q. I thought you just told me that
21 Ms. Jackson hadn't engaged in any
22 misconduct after January 5th?

23 A. No. But the tensions were still

1 there.

2 Q. What kind of tensions are you talking
3 about?

4 A. Feelings were hurt.

5 Q. Whose feelings were hurt?

6 A. I believe Ms. Jackson's.

7 Q. So you fired Ms. Jackson because her
8 feelings were hurt?

9 A. No.

10 Q. Okay.

11 A. Absolutely not.

12 Q. Let's be clear then. Why -- if
13 Ms. Jackson was recommended for
14 termination before she was
15 transferred, I still don't understand
16 why she would be transferred if she
17 was already recommended for
18 termination.

19 A. Oh, I don't know. You would have to
20 ask Mr. Calametti that.

21 Q. Okay.

22 A. I didn't do the transfer. I didn't --
23 I didn't move her. That was

1 Mr. Calametti.

2 Q. Okay. But you don't know if she had
3 been -- discussions about terminating
4 her had started before or after the
5 transfer?

6 A. No, I do not know.

7 Q. Who was the first person to start the
8 ball rolling on getting Ms. Jackson
9 terminated?

10 MR. REDD: Asked and answered.

11 A. I don't recall.

12 Q. But you concurred with the decision to
13 terminate her; right?

14 MR. REDD: Asked and answered.

15 A. I concurred with the discussions that
16 termination was appropriate.

17 Q. Okay. When -- when did you decide in
18 your mind that Ms. Jackson should be
19 terminated?

20 A. I don't recall.

21 Q. Was it before you wrote the
22 termination recommendation?

23 A. What was the question again, now?

1 Q. I asked you when you decided in your
2 own mind when Ms. Jackson -- that
3 Ms. Jackson should be terminated. And
4 then I asked you was it before you
5 wrote the termination recommendation?

6 A. I didn't decide the termination.

7 Q. I know. At some point you arrived at
8 your own personal opinion that
9 Ms. Jackson should be terminated;
10 right?

11 A. I concurred with the discussions and
12 decisions. I didn't decide the
13 termination.

14 Q. I understand that you didn't decide
15 the termination.

16 A. Yeah.

17 Q. But you agreed that termination was
18 the appropriate action; right?

19 A. I concurred with it, yes.

20 Q. You formed a personal opinion that it
21 was appropriate to terminate
22 Ms. Jackson; right?

23 A. I don't know if it was a personal

1 opinion. I can't say that it was a
2 personal opinion.

3 Q. Okay. So you didn't have any opinion
4 either way about whether Ms. Jackson
5 should be terminated?

6 A. Based off the incidents, I concurred
7 with the discussion that termination
8 was --

9 Q. Okay. That's not -- that's not the
10 question that I asked you. The
11 question that I asked you is, did you
12 have a personal opinion about whether
13 Ms. Jackson should be terminated?

14 A. Yes. I concurred with the decision,
15 yes.

16 Q. Okay. Did you concur with the
17 decision after it was made or before
18 it was made?

19 A. Before --

20 MR. REDD: Object to the form.

21 It's obvious you can't
22 testify to something you
23 don't know about.

1 A. Yeah, exactly.

2 Q. Exactly what your lawyer said?

3 MR. REDD: Object to the form.

4 A. I can't say I concur with something I
5 don't know about.

6 Q. Before the decision was made to
7 terminate Ms. Jackson --

8 A. Okay.

9 Q. -- did you have an opinion about
10 whether she should be terminated?

11 A. Yes.

12 Q. And what was your opinion?

13 A. That the incidents listed below
14 concurred -- or warranted termination.

15 Q. Okay. When did you arrive at that
16 decision?

17 A. I don't recall.

18 Q. Did you arrive at that decision after
19 the discussions with Mr. Morris?

20 A. No.

21 Q. So you arrived at that decision before
22 the discussions with Mr. Morris?

23 A. I didn't arrive at any decisions. I

1 arrived --

2 Q. I'm sorry. Let's call it an opinion
3 then.

4 A. Okay.

5 MR. REDD: Let's call it a
6 concurrence.

7 THE WITNESS: Yeah.

8 Q. You arrived at the opinion that
9 Ms. Jackson should be terminated
10 before you discussed it with
11 Mr. Morris; right?

12 A. I believe that the incidents listed --

13 Q. No, no. That's not my question.

14 A. Okay.

15 Q. My question is, did you arrive at the
16 opinion in your own mind that
17 Ms. Jackson should be terminated
18 before the discussion with Mr. Morris?
19 It's a simple question.

20 A. Yes, yeah.

21 Q. Okay. Did you arrive at the
22 decision -- at the opinion in your own
23 mind that Ms. Jackson should be

1 terminated before the conversation,
2 the first conversation, with
3 Ms. Deitz?

4 A. I don't remember.

5 Q. Did you arrive at your opinion that
6 Ms. Jackson should be terminated
7 before you got this letter from
8 Mr. Calametti saying that she was
9 getting a new Form 40?

10 A. No.

11 Q. So it was after she got -- after you
12 learned that she was getting the new
13 Form 40 that you arrived at the
14 opinion that she should be terminated?

15 A. No, it was not after that.

16 Q. It was before this, before the new
17 Form 40?

18 A. Yes.

19 Q. So you had already decided in your
20 mind that it was your opinion that
21 Ms. Jackson should be terminated
22 before you got this letter from
23 Mr. Calametti to amend her Form 40?

1 A. Can you say that again?

2 Q. Yeah. You had already arrived at the
3 opinion that Ms. Jackson should be
4 terminated before you got this letter
5 from Mr. Calametti that's Exhibit 11;
6 right?

7 A. Yes.

8 Q. What was the event or occurrence that
9 caused you to form the opinion that
10 Ms. Jackson should be terminated?

11 A. I believe it was the accumulation of
12 all the incidents.

13 Q. And those had accumulated by
14 January 5th; right?

15 A. Yes.

16 Q. Did you form the opinion on
17 January 5th that she should be
18 terminated?

19 A. I don't recall.

20 Q. She was given a written reprimand for
21 the events of January 5th on
22 January 18th right?

23 A. Yes.

1 Q. At the time of January 18th, had you
2 formed the opinion that she should be
3 terminated?

4 A. Before the 18th?

5 Q. Right.

6 A. Is that what you're asking me?

7 Q. Right.

8 A. I don't recall.

9 Q. I'm not sure why this is so difficult.
10 I mean, you're a supervisor; right?

11 A. Yeah.

12 Q. And you're in Ms. Jackson's chain of
13 command; right?

14 A. Yes.

15 Q. She's an employee working under your
16 supervision; right -- or I'm sorry --
17 working under -- two steps below your
18 supervision; right?

19 A. I'm in her chain of command.

20 Q. At some time you're sitting around
21 doing something or something comes up
22 and you think, I think we need to
23 terminate LaShundra Jackson. Did that

1 ever happen?

2 MR. REDD: Object to the form.

3 A. No. That's pretty simplistic. No.

4 That doesn't occur.

5 Q. Obviously it occurred in somebody's
6 mind that Ms. Jackson should be
7 terminated; right?

8 A. I believe it occurred in many minds.

9 Q. At what point did it occur in your
10 mind?

11 MR. REDD: Object to the form.

12 I think you're answered
13 that he doesn't know the
14 exact day.

15 A. I don't know the day. I don't know.

16 Q. And you don't know what it was that
17 made you think of that?

18 A. Out of the blue, no, I do not.

19 Q. Okay. Do you know what it was that --
20 do you know who called the first
21 meeting that you attended where
22 Ms. Jackson's termination was
23 discussed?

1 A. No, I do not.

2 Q. But you weren't the first one to put
3 that idea forward of terminating her;
4 right?

5 A. I don't know.

6 Q. You don't know?

7 A. I don't know if I was the first or
8 not.

9 Q. Let me show you what I've marked as
10 Exhibit 22 to your deposition. Do you
11 recognize that document?

12 (The referred-to document was
13 marked for identification
14 as Plaintiff's Exhibit No. 22.)

15 A. Yes.

16 Q. Can you tell me what it is?

17 A. It's my recommendation that
18 Ms. Jackson be terminated.

19 Q. Okay. And this is the recommendation
20 that you were instructed to write by
21 Mr. Morris?

22 A. No.

23 Q. Okay. Did anyone instruct you to

1 write this recommendation?

2 A. Yes.

3 Q. Who instructed you to write it?

4 A. Mr. Calametti.

5 Q. And you reference four dates in this
6 recommendation; right? I'm sorry.

7 And when I say you're referencing four
8 dates, four dates of things that
9 happened that formed the basis of your
10 recommendation that she be terminated;
11 right?

12 A. There's three dates.

13 Q. October 6th, November 2nd,
14 January 18th, January 5th; right?

15 MR. REDD: Object to the form.

16 A. There's four dates in that letter.

17 Q. Okay.

18 A. The 18th refers back to the
19 January 5th incident.

20 Q. Okay. Tell me -- tell me what it
21 was -- let's see. We've talked about
22 October 6th. What was the incident on
23 November 2nd that is the basis for her

1 termination?

2 A. That was addressed in her
3 mid-appraisal.

4 Q. Okay. What was the incident?

5 A. It was in the mid-appraisal. It was
6 addressed in her mid-appraisal.

7 Q. It was -- it was her mid-appraisal, or
8 it was addressed in her mid-appraisal?

9 A. The issue concerning her professional
10 manner was addressed in her
11 mid-appraisal.

12 Q. Okay. What was the incident of her
13 professional manner that was addressed
14 in her mid-appraisal?

15 A. I didn't look at her mid-appraisal.

16 (Off-the-record discussion.)

17 Q. Let me show you what I've marked as
18 Exhibit 5. Is that the mid-appraisal
19 that you're talking about?

20 (Plaintiff's Exhibit 5 was
21 previously marked and is
22 not attached hereto.)

23 A. Yes.

1 Q. Okay. What was the -- what was the
2 incident that she was being -- or what
3 was the incident of November 2nd
4 that's being discussed here?

5 A. I don't believe it was an incident.

6 Q. Okay.

7 A. She was advised on her mid-appraisal
8 that she should conduct herself in a
9 professional manner in an office
10 setting.

11 Q. Okay. And was that one of the reasons
12 that she was terminated, for being
13 advised of that?

14 A. I don't know.

15 Q. You wrote it in your recommendation
16 letter; right?

17 A. Yes.

18 Q. Okay. But you don't know whether that
19 was one of the reasons that you were
20 recommending she should be terminated?

21 A. I listed it as one of my
22 recommendations that she should be
23 terminated. I don't know if it was

1 the determining incident that
2 terminated her. That one incident, I
3 don't know.

4 Q. Did you think that what happened on
5 November 2nd was a basis for
6 terminating her?

7 A. I think where she was advised on
8 November 2nd to conduct herself in a
9 professional manner warranted
10 inclusion in this recommendation.

11 Q. Okay. And why did you think that?

12 A. Because she was advised concerning her
13 behavior in conducting herself in a
14 professional manner, and then on
15 January 18th come the incident after
16 the mid-appraisal.

17 Q. Had Ms. Jackson conducted herself in
18 an unprofessional manner as of
19 November 2nd, 2006?

20 A. I believe she did.

21 Q. Okay. On what occasion did she do
22 that?

23 A. I think the incident of -- of -- in

1 October.

2 Q. Okay. Any others?

3 A. I don't know.

4 Q. So really the November 2nd, being
5 advised of conducting herself in a
6 professional manner, that just relates
7 to what happened on October 6th?

8 A. I don't know if it's specifically
9 October 6th. I don't know.

10 Q. Okay. Now, you wrote this letter, so
11 you --

12 A. I didn't write her mid-appraisal.

13 Q. I know you didn't write her
14 mid-appraisal. Her mid-appraisal just
15 says that -- that Mr. Paulk spoke with
16 her about conducting herself in a
17 professional manner in an office
18 setting; right?

19 A. Yes.

20 Q. All right. Do you know what he spoke
21 with her about on that day?

22 A. I'm sure it was the October incident.

23 Q. Do you know if it was?

1 A. No.

2 Q. Do you know if there were any other
3 incidents that he talked with her
4 about?

5 A. I don't know.

6 Q. So basically you're saying to me right
7 now that you recommended terminating
8 her because Mr. Paulk talked to her
9 about conducting herself in a
10 professional manner?

11 MR. REDD: Object to the form.
12 That's not what he's
13 saying.

14 A. No, that's not what I'm saying.

15 Q. Okay. What are you saying?

16 A. I'm saying these are the accumulations
17 of all the incidents and issues.

18 Q. Okay. And the November 2nd incident
19 and issue is just her receiving her
20 mid-appraisal; right?

21 A. Yes. Which was addressed that she
22 needs to conduct herself in a
23 professional manner.

1 Q. All right. So you recommended that
2 she be terminated for incidents on
3 October 6th, November 2nd, and
4 January 5th; right?

5 A. No. November 2nd is not an incident.

6 Q. Okay. So you recommended that she be
7 terminated based on incidents
8 occurring on October 6th and
9 January 5th; correct?

10 A. And areas that she needed to improve
11 upon, which was the November 2nd
12 mid-appraisal.

13 Q. Let me show you what I've marked as
14 Exhibit 23 to your deposition. Do you
15 recognize that document?

16 (The referred-to document was
17 marked for identification
18 as Plaintiff's Exhibit No. 23.)

19 A. Yes.

20 Q. Look at the last page of that
21 document. The last sentence says (as
22 read:) I recommended the termination
23 of her employment based on incidents

1 of October 4th, 2006, December 20th,
2 2006, and January 5th, 2007; right?

3 A. Yes.

4 Q. Okay. But you didn't mention the
5 December 20th, 2006, in your
6 termination recommendation letter, did
7 you?

8 A. No.

9 Q. Did you just leave that out
10 inadvertently?

11 A. No. There were -- I don't believe
12 there was a disciplinary action on
13 that date.

14 Q. Well, there was no disciplinary action
15 on November 2nd either, was there?

16 A. It's a mid-appraisal which addresses
17 weaknesses that she needs to improve
18 on.

19 Q. The mid-appraisal has to address some
20 weaknesses that people need to improve
21 on; right? There's a section --

22 A. No, that's not correct.

23 Q. There's a section for it in there;

1 right?

2 A. Yes.

3 Q. Did you -- could you only address
4 incidents that somebody is disciplined
5 for in a termination recommendation?

6 A. Not necessarily.

7 Q. So you could have -- there is no rule
8 that says you couldn't have mentioned
9 the December 20th incident in her
10 termination recommendation, is there?

11 A. I don't believe so.

12 Q. You just left it out?

13 A. I didn't include it.

14 Q. And you don't know which incidents
15 Ms. Jackson was actually terminated
16 because of, do you?

17 A. I don't think there's a specific
18 incident. I do not know.

19 Q. Did you take any notes during the
20 meeting that you had with -- the first
21 meeting that you had with Ms. Deitz
22 about terminating Ms. Jackson?

23 A. No.

1 Q. Did you take any notes during that
2 meeting where Mr. Morris was on the
3 phone?

4 A. No.

5 Q. In your affidavit that's marked as
6 Exhibit 23, you say in here (as read:)
7 I'm unaware of any request for
8 accommodation because of Ms. Jackson's
9 pregnancy.

10 Is that right?

11 A. Yes.

12 Q. Did Mr. Calametti not send you the
13 letter on February 13th requesting the
14 accommodation for Ms. Jackson's
15 pregnancy?

16 A. There was not a request for
17 accommodations on that letter of
18 February 13th.

19 Q. Okay. Do you know what the temporary
20 work restrictions is that's attached
21 to this memo?

22 A. To this memo?

23 Q. Yeah. Was it the doctor's note?

1 A. I don't know. I've never seen the
2 doctor's note.

3 Q. Okay. Where he says in the memo (as
4 read:) Attached please find temporary
5 work restriction on LaShundra Jackson.

6 Do you know what the
7 temporary work restriction is that he
8 is referring to?

9 A. No, I guess -- I can only assume it
10 was her pregnancy.

11 Q. Okay. Her actual pregnancy was not
12 attached to this memo, was it?

13 A. I don't recall it being attached to
14 the memo.

15 MR. REDD: Was that a touch of
16 sarcasm?

17 Q. (By Mr. Simon:) I'm trying to figure
18 out if you can recall seeing a
19 document attached to this memo?

20 MR. REDD: He said he didn't
21 see the notes, so --

22 A. I never saw the doctor's notes.

23 Q. Okay. I'm not asking you if it was

1 the doctor's notes attached. I'm
2 asking you what was attached to this
3 memo.

4 A. I do not know.

5 Q. But it was a temporary work
6 restriction of some sort; right?

7 MR. REDD: He said he didn't
8 know.

9 A. I don't know.

10 Q. The memo says that there is a
11 temporary work restriction attached;
12 right?

13 A. Attached please find temporary work
14 restriction, yes.

15 Q. And that's some kind of accommodation
16 for Ms. Jackson's pregnancy; right?

17 MR. REDD: Object to the form.
18 He doesn't know.

19 A. Not necessarily. It may be temporary
20 work restrictions.

21 Q. Have you ever had any other
22 engineering assistants be brought in
23 from the field to do inside work

1 because they're pregnant?

2 A. No. I don't recall any.

3 Q. You testified in your affidavit about
4 somebody named Ms. Weaver, and you
5 said that she was already working in
6 an inside position when she became
7 pregnant?

8 A. She was assigned as office engineer
9 for a project.

10 Q. So at the time of her pregnancy -- at
11 the time that ALDOT learned of her
12 pregnancy, she was already working
13 inside?

14 A. She was working in an office
15 environment, yes.

16 Q. She was no -- she was not doing
17 inspection work?

18 A. I wasn't aware of that. She was the
19 office engineer for one of the
20 projects.

21 Q. Currently?

22 A. No. She's no longer with the
23 Department.

1 Q. But at the time that she announced her
2 pregnancy, she was the office engineer
3 for one of the projects?

4 A. Yes.

5 Q. If there was testimony from another
6 ALDOT employee who worked with her
7 that she was brought inside when she
8 became pregnant, would you have any
9 reason to dispute that?

10 A. Without knowing all the information, I
11 couldn't say yes or no.

12 Q. Okay.

13 A. I don't believe there was ever a
14 request from Ms. Weaver, or I'm not
15 aware of one.

16 Q. You say on the first page of your
17 affidavit (as read:) Prior to
18 beginning actual work, Ms. Jackson was
19 informed that her employment would
20 consist of outside work.

21 A. Yeah.

22 Q. What's the importance of that?

23 A. As a construction inspector, they work

1 outdoors.

2 Q. Are all probationary engineering
3 assistants made project inspectors?

4 A. No.

5 Q. Some of them do other jobs?

6 A. Yes.

7 Q. Some of them do jobs that are inside?

8 A. Yes.

9 Q. But the job that Ms. Jackson was being
10 hired for was an outside job?

11 A. Yes.

12 Q. But there wasn't any kind of problem
13 with moving her to an inside job when
14 she became pregnant, was there?

15 A. We had work for her.

16 (Off-the-record Discussion.)

17 Q. Was it a problem to move her inside
18 though?

19 A. No.

20 Q. And Mr. Cooper had plenty of work for
21 her to do; right?

22 A. Yes.

23 Q. And Mr. Paulk, he didn't have enough

1 work for her to do on the inside; is
2 that right?

3 A. I don't know.

4 Q. What kind of work was she doing under
5 Mr. Cooper?

6 A. I would assume she would be doing
7 office work.

8 Q. Do you know what kind of office work
9 it was?

10 A. No, I do not.

11 Q. Who prepared her new Form 40?

12 A. That should have been Mr. Cooper.

13 Q. Did you sign off on -- I'm sorry. Did
14 you have any involvement in preparing
15 her new Form 40?

16 A. I don't review Form 40s.

17 Q. Did you have any involvement in
18 determining what her inside duties
19 were going to be when she was moved
20 inside?

21 A. No.

22 Q. Who did Ms. Jackson's final
23 performance appraisal?

1 A. I'm sorry?

2 Q. Who prepared Ms. Jackson's final
3 performance appraisal?

4 A. I did.

5 Q. Were you -- were you her supervisor at
6 that time?

7 A. No.

8 Q. Then why did you prepare it?

9 A. I was instructed to.

10 Q. Who instructed you to prepare it?

11 A. Mr. Calametti.

12 Q. Did Mr. Calametti instruct you on what
13 ratings to give Ms. Jackson on her
14 performance appraisal?

15 A. I don't believe so.

16 Q. Who decided what numerical ratings she
17 was going to receive for the various
18 responsibilities?

19 A. Who decided?

20 Q. Yeah.

21 A. I decided.

22 Q. On what basis did you decide what
23 ratings she was going to get in each

1 responsibility category?

2 A. Based on her performance with her
3 supervisors.

4 Q. And how did you hear about that
5 performance with her supervisors?

6 A. I believe I discussed it with them.

7 Q. You discussed Ms. Jackson's job
8 performance with Mr. Paulk?

9 A. Yes.

10 Q. Did you also discuss Ms. Jackson's job
11 performance with Mr. Cooper?

12 A. Yes.

13 Q. Did you get input from Mr. Cooper as
14 to how Ms. Jackson was doing as an
15 engineering assistant?

16 A. I believe so.

17 Q. And did you get input from Mr. Paulk
18 as to how Ms. Jackson was doing as an
19 engineering assistant?

20 A. I believe so.

21 Q. And what was the input that you got
22 from Mr. Paulk on how Ms. Jackson was
23 doing?

1 A. As far as her performance?

2 Q. Yeah. Her work performance.

3 A. Specific items as per her appraisal?

4 Is that what you mean?

5 Q. Yes.

6 A. I think they averaged "meets
7 standards."

8 Q. Did you go over each of the
9 performance elements with -- or I'm
10 sorry -- each of the responsibility
11 scores with Mr. Paulk before you put
12 them on the form?

13 A. I believe so. Can I see a copy of
14 the -- the appraisal?

15 Q. Yeah. Here you go. It's marked as
16 Plaintiff's Exhibit 10. Do you
17 recognize that document?

18 (Plaintiff's Exhibit 10 was
19 previously marked and is
20 not attached hereto.)

21 A. Yes.

22 Q. And you prepared this on February 23rd
23 of '07; is that right?

1 A. That's the date I signed it.

2 Q. And Bret Paulk initialed it by your
3 signature; right?

4 A. Yes.

5 Q. And Mr. Calametti did too?

6 A. Yes.

7 Q. Mr. Cooper didn't though?

8 A. No.

9 Q. And he was her direct supervisor at
10 the time that this was done; right?

11 A. I don't know. I don't believe he was.

12 Q. You think that you prepared this
13 performance appraisal before
14 Ms. Jackson was transferred to
15 Mr. Cooper?

16 A. I don't believe -- I'm not sure if she
17 was transferred.

18 Q. You think you prepared this
19 performance appraisal before
20 Ms. Jackson was assigned to work with
21 Mr. Cooper?

22 A. Oh, no, I do not.

23 Q. So it was after she was assigned to

1 work with Mr. Cooper that you prepared
2 this performance appraisal?

3 A. I believe so.

4 Q. Was Mr. Cooper considered her
5 supervisor?

6 A. I don't know.

7 Q. It says on her Form 40 that he was her
8 supervisor; right?

9 A. Yes.

10 Q. But you don't know whether he was
11 actually her supervisor?

12 A. I don't know whether she was actually
13 permanently assigned to Mr. Cooper.

14 Q. But you did get input from Mr. Cooper
15 on how Ms. Jackson was doing on her
16 job duties before you prepared this
17 appraisal; is that correct?

18 A. Yes, I discussed this with Mr. Cooper.

19 Q. And what did Mr. Cooper say about how
20 Ms. Jackson was doing on her job
21 duties?

22 A. She did fine.

23 Q. Let's talk about responsibility

1 category Number 1 where she was given
2 a "partially meets standards" in the
3 category of "communicates orally with
4 individuals." What was the reason
5 that you rated her a 1 in that
6 category?

7 A. (Witness reviewing document.)

8 I believe it was with her
9 communication skills with her
10 supervisor.

11 Q. Which supervisor?

12 A. Mr. Paulk --

13 Q. She didn't have good --

14 A. -- and Mr. McElhenney.

15 Q. Mr. McElhenney was her supervisor?

16 A. No. Mr. Paulk and Mr. McElhenney.

17 Her supervisor, Mr. Paulk, and
18 Mr. McElhenney, an additional
19 supervisor.

20 Q. He was not --

21 A. Yes.

22 Q. And did you rate her "partially meets
23 standards" because of what happened on

1 January 5th?

2 A. I would say yes.

3 Q. Were there any other reasons that she
4 got a 1 rating in that category?

5 A. I believe on that incident with
6 Mr. Fresolone and Mr. Malone, her
7 communication with those individuals
8 as well.

9 Q. On January 5th; right?

10 A. Yes.

11 Q. Was there any reason other than what
12 happened on January 5th that you rated
13 her as a 1 in that category?

14 A. I don't recall any additional.

15 Q. Let's talk about responsibility
16 Number 6, "performs and obtains
17 inspections and tests on concrete."
18 She got a 1 rating in that category
19 too; right?

20 A. Yes.

21 Q. And the 1 rating is a poor rating;
22 right?

23 A. No.

1 Q. It's not?

2 A. No.

3 Q. Is it a good rating?

4 A. No. It means she partially meets
5 standards.

6 Q. That's below average; right?

7 A. No. It's just that she partially
8 meets the requirements. It's not
9 necessarily below average. If she
10 doesn't have full certification, she
11 can't fully perform her duties.

12 Q. So responsibility Number 6, you rated
13 her a 1. What was the reason for
14 that?

15 A. I don't believe she had her full
16 certifications.

17 Q. What makes you think that she didn't?

18 A. I don't believe she had passed or gone
19 through the ACI concrete school or the
20 Road Tech school.

21 Q. What makes you -- what makes you think
22 that she hadn't?

23 A. Typically she would have to be

1 certified in concrete and roadway and
2 nuclear gauge to adequately meet
3 standards to perform those duties.

4 Q. Okay. If you look at her previous
5 performance appraisal from
6 December 20th, what was her rating
7 on -- did she get a rating in that
8 category?

9 A. She got a 1.

10 Q. And is that because she hadn't passed
11 her certifications?

12 A. I would assume so.

13 Q. How do you know that she didn't pass
14 her certifications by the time that
15 she did this review in February?

16 A. Typically our probationary employees
17 are not allowed -- I'll not say not
18 allowed. The opportunity is, after
19 they come off of probation, then the
20 formal training for concrete, asphalt,
21 radiological is initiated and
22 scheduled.

23 Q. Okay. So if I look at performance

1 appraisals of other engineering
2 assistants -- other probationary
3 engineering assistants, they should
4 all have a 1 for their score for
5 "performs and obtains inspections and
6 tests" on file?

7 A. I don't know.

8 Q. But if they haven't passed those
9 courses, then they should?

10 A. If they can't perform concrete -- if
11 they're not fully certified, yeah,
12 they should be "meets standards." But
13 if they pass one part, if they pass
14 the State or the ACI, we typically
15 grant -- or rate them -- or the
16 supervisor would typically rate them
17 "partially meets standards." It's not
18 a below average. It's not a poor
19 average.

20 Q. What is the -- what is the reason for
21 doing one of these performance
22 appraisals on a probationary employee?

23 A. One of what?

1 Q. What is the --

2 A. What reason?

3 Q. What is the reason that ALDOT has you
4 do these performance appraisals for
5 probationary employees?

6 A. This particular appraisal?

7 Q. This kind of appraisal, yeah. I'm
8 asking in general, not specifically
9 about Ms. Jackson.

10 A. To give the employee indication of
11 where they're at.

12 Q. For permanent employees it determines
13 your merit raise; right?

14 A. It can.

15 Q. And a score of "exceeds standards" or
16 "consistently exceeds standards" will
17 give you a two-step raise; right?

18 A. "Exceeds standards."

19 Q. Well, what does "consistently exceeds"
20 do?

21 A. They got a three-step.

22 Q. Okay. And the score of "meets
23 standards," what kind of raise do you

1 get from that?

2 A. I believe a one-step.

3 Q. And a score of "partially meets
4 standards," what kind of raise do you
5 get from that?

6 A. Zero.

7 Q. No raise at all?

8 A. That's correct.

9 Q. They don't lower your pay, do they?

10 A. No, they do not.

11 Q. So the purpose for doing one of these
12 for a probationary employee is to tell
13 them where they're at with their
14 performance?

15 A. And it's the -- the supervisor's
16 evaluation of the employee.

17 Q. This one wasn't given to Ms. Jackson
18 until she had already left the
19 department, was it?

20 A. That's correct.

21 Q. What would be the purpose of doing a
22 performance appraisal for somebody who
23 is going to be terminated?

1 A. I do not know.

2 Q. And who instructed you to do this
3 performance appraisal? Mr. Calametti;
4 is that right?

5 A. I believe so.

6 Q. Let me show you what's been marked as
7 Exhibit 9. That's the same
8 performance appraisal, but it's got
9 Mr. McInnes' signature on it; right?

10 (Plaintiff's Exhibit 9 was
11 previously marked and is
12 not attached hereto.)

13 A. I think he initialed it.

14 Q. It also -- if you look at the top of
15 the document where it says "period
16 covered from," it looks like the dates
17 have been changed; is that right?

18 A. Yes.

19 Q. Do you know who changed those dates?

20 A. I do not.

21 Q. Did you change them?

22 A. I did not.

23 Q. Were they changed after you had signed

1 off on it?

2 A. Yes.

3 Q. Or were they changed after Mr. Poiroux
4 had signed off on it?

5 A. I do not know that.

6 Q. Do you know why they were changed?

7 A. I do not.

8 Q. The dates that they were changed to,
9 the starting point would be
10 Ms. Jackson's hire date; right,
11 7/3/06?

12 A. I don't know what day exactly she was
13 hired on.

14 Q. But that was around the time she was
15 hired; right?

16 A. I believe so, yes.

17 Q. Then do you know what the significance
18 of April 2nd, 2007, would be?

19 A. No, I do not.

20 Q. Could that be the end of her extended
21 probationary period?

22 A. Oh, I don't know. I don't know what
23 period -- what date that is.

1 Q. Look at -- she was extended -- her
2 probation was extended for three
3 months; right?

4 A. Yes.

5 Q. If you'll look at the December 20th
6 performance appraisal, it says that
7 it's through the period January 2nd,
8 2007; right?

9 A. Yes.

10 Q. So January 2nd, 2007, to March -- to
11 April 2nd, 2007, is three months;
12 right?

13 A. Roughly, yes.

14 Q. So would you agree with me that it
15 appears that this final performance
16 appraisal would be for the last three
17 months of her probationary period?

18 A. This one?

19 Q. The one that goes through April 2nd of
20 2007?

21 A. According to this, it says from July
22 to April.

23 Q. Oh, I'm sorry. So -- so it really

1 encompasses the entire nine months of
2 her probationary period; right?

3 A. My appraisal?

4 Q. Yes.

5 A. My appraisal was from December.

6 Q. Okay. So you were evaluating
7 Ms. Jackson's performance from
8 December 21st of '06 to February 23rd
9 of '07?

10 A. Yes.

11 Q. So you don't know who changed it to be
12 that this was actually you were rating
13 her performance for the whole time
14 that she worked there?

15 A. I do not.

16 Q. And even for a month and a half after
17 she worked there?

18 A. A month and a half? I'm sorry?

19 Q. Approximately a month and a half after
20 she worked there to April 2nd of 2007?
21 She didn't really work there until
22 April 2nd of 2007, did she?

23 A. Oh, I don't know.

1 Q. You don't know when her last day of
2 work was?

3 A. It was -- the termination letter given
4 to her, no, I don't know that exact
5 date, no.

6 Q. I don't think I have a copy of that.
7 That's okay. But you didn't think
8 when you filled out this performance
9 appraisal that you were rating her for
10 her entire time at ALDOT, did you?

11 A. No. I thought it was during this time
12 period. This is what was -- no.

13 Q. Okay. But somebody decided that you
14 really were rating her for that whole
15 time period?

16 A. Well, maybe I was. Maybe I misstated
17 the dates. I don't remember.

18 Q. Okay. Let me show you what's been
19 marked as Exhibit 24. This is a short
20 e-mail chain about some concrete tech
21 results. Do you know why Ms. Hadley
22 says in this e-mail that she
23 especially needs to know if LaShundra

1 Jackson passed the concrete tech on
2 February 22nd?

3 (The referred-to document was
4 marked for identification
5 as Plaintiff's Exhibit No. 24.)

6 A. No, I don't.

7 Q. Did you have any conversations with
8 Ms. Hadley about needing to know this
9 information?

10 A. I don't recall any conversations.

11 MR. SIMON: What's the Exhibit
12 Number that I put on
13 there?

14 THE REPORTER: 24.

15 MR. SIMON: And here's your
16 copy, sir.

17 Q. (By Mr. Simon:) Are you aware of
18 whether Ms. Jackson received her
19 unemployment benefits?

20 A. If she did or did not?

21 Q. Right.

22 A. I don't recall whether she did or
23 didn't.

1 Q. You participated in the unemployment
2 hearing; right?

3 A. I believe so.

4 Q. Let me show you what I have marked as
5 Exhibit 25 to your deposition. Do you
6 recognize that document?

7 (The referred-to document was
8 marked for identification
9 as Plaintiff's Exhibit No. 25.)

10 A. I can't say if I've seen this document
11 or not.

12 Q. Okay. Let me ask you to look at the
13 second page of this document.

14 A. Uh-huh.

15 (Off-the-record Discussion.)

16 Q. In the paragraph right before the word
17 "decision" appears in bold, it says
18 (as read:) The employer has alleged
19 that the claimant's termination
20 resulted from her disruptive and
21 disrespectful behavior towards
22 supervisor and co-workers.

23 And that was the

1 allegation; right?

2 A. Where is this at?

3 Q. It's the -- it's the middle of that
4 big paragraph on the second page (as
5 read:) The employer has alleged that
6 the claimant's termination resulted
7 from her disruptive and disrespectful
8 behavior towards supervisory personnel
9 and co-workers.

10 Right?

11 A. That's what it says, yes.

12 Q. And that was the allegation that was
13 the basis for Ms. Jackson's
14 termination; right?

15 A. Yes. As per the terminations, yeah.

16 Q. And then the Hearing Officer goes on
17 to say, however, the claimant was
18 discharged after a warning for an
19 incident that occurred significantly
20 prior to the termination date; is that
21 correct?

22 MR. REDD: Object to the form.

23 A. That's what it says.

1 Q. Okay. Would that be a correct
2 statement? She was discharged after
3 warning for an incident that occurred
4 significantly prior to the termination
5 date?

6 MR. REDD: Object to the form.

7 A. I don't know what they mean by
8 significant. That's their -- their
9 terminology.

10 Q. You recommended the termination on
11 February 22nd; right?

12 A. I believe so.

13 Q. And so she was terminated sometime
14 after that; right?

15 A. Yes.

16 Q. And the last incident of misconduct
17 was January 5th; right?

18 A. I believe so.

19 Q. Okay. The Hearing Officer says (as
20 read:) No cause or relationship has
21 been established between the incident
22 and termination.

23 MR. REDD: Object to the form.

1 Q. Is that correct?

2 A. That's what it says.

3 Q. What is the relationship between the
4 incident that led to her termination
5 and the termination itself?

6 MR. REDD: Object to the form.

7 A. What's the question?

8 Q. What is the relationship between the
9 incident that led to her termination
10 and the termination itself?

11 MR. REDD: Object to the form.

12 A. Relationship? What do you mean
13 relationship?

14 Q. Well, I'm kind of asking you based on
15 what the hearing officer is saying
16 here.

17 MR. REDD: And I object
18 because he can't read her
19 mind.

20 MR. SIMON: I understand. I'm
21 asking what he thinks
22 about it though.

23 MR. REDD: What he's

1 thinking -- go ahead.

2 Q. You recommended termination of
3 Ms. Jackson about six weeks after the
4 incident -- the last incident of
5 misconduct; right?

6 A. Approximately, yes.

7 Q. Why was there such a long delay
8 between that last incident of
9 misconduct and when you recommended
10 termination?

11 A. I don't know.

12 MR. SIMON: I believe that's
13 all I have. Let's take a
14 five-minute break to go
15 through everything and
16 make sure I've got
17 everything.

18 MR. REDD: Sure.

19 (Brief recess was taken.)

20 Q. (By Mr. Simon:) Let me show you what
21 I've marked here as Exhibit 4. That
22 letter shows that Ms. Jackson was
23 terminated effective Friday,

1 March 9th; right?

2 (Plaintiff's Exhibit 4 was
3 previously marked and is
4 not attached hereto.)

5 A. Yes.

6 Q. You filled out her final performance
7 review and dated it February 23rd;
8 right?

9 A. Yes.

10 Q. And when you -- when you prepared it
11 and dated it, you didn't give it to
12 Ms. Jackson to sign, did you?

13 A. No.

14 Q. You didn't show it to her, did you?

15 A. No.

16 Q. Okay. It says on there that all
17 signatures are mandatory; right?

18 A. Where?

19 Q. Under the block near the top that says
20 appraisal signatures, the last
21 sentence, it says that all signatures
22 are mandatory; right?

23 A. Yes.

1 Q. Okay. Why wasn't Ms. Jackson's
2 signature requested on this form?

3 A. I do not know.

4 Q. Usually the employee would sign it
5 with the ratings supervisor; right?

6 A. That's correct.

7 Q. But you didn't do that in this
8 situation?

9 A. No.

10 Q. Why not?

11 A. I do not know.

12 Q. Did you just forget?

13 A. No.

14 Q. Were you instructed not to have her
15 sign it?

16 A. I don't believe I was instructed not
17 to have her sign it.

18 Q. Did you make a decision on your own
19 not to have her sign it?

20 A. No.

21 Q. Where -- what did you do with this
22 performance appraisal after you signed
23 it?

1 A. I believe it was forwarded to
2 personnel.

3 Q. Okay. You signed it on February 23rd;
4 right?

5 A. Yes.

6 Q. And by personnel, do you mean the
7 personnel in Montgomery?

8 A. No. Here local.

9 Q. And do you know what personnel did
10 with it?

11 A. I do not.

12 Q. It's got Poiroux's signature on it on
13 the 27th; right?

14 A. Yes.

15 Q. And by the time he signed it,
16 Ms. Jackson should also have signed
17 it; right?

18 A. I don't know.

19 Q. That's how it worked on the December
20 performance appraisal; right?

21 A. Yes. That's how they typically work,
22 yes.

23 (Off-the-record Discussion.)

1 MR. SIMON: Okay. That's all
2 I've got. Now you can
3 go.

4 MR. TRIPPE: Well, Andy may
5 have some quick
6 questions, so let's take
7 a quick break.

8 MR. SIMON: Okay.
9 (Brief recess was taken.)

10 MR. TRIPPE: We're done.

11
12 (The deposition of **JAY PALMER**
13 concluded at approximately
14 11:54 a.m., on June 19th, 2008.)
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* * * * *
REPORTER'S CERTIFICATE
* * * * *

STATE OF ALABAMA
COUNTY OF MONTGOMERY

I, Karen Reagan Drinkard,
AL-CCR #005, Certified Court Reporter
and Notary Public in and for the State
of Alabama at Large, do hereby certify
that on June 19th, 2008, pursuant to
notice and stipulation on behalf of
the Plaintiff, I reported the
deposition of **JAY PALMER**, who was
first duly sworn by me to speak the
truth, the whole truth, and nothing
but the truth, in the matter of
LASHUNDRA JACKSON, Plaintiff, versus
STATE OF ALABAMA DEPARTMENT OF
TRANSPORTATION, JOE McINNES, in his
official capacity as DIRECTOR OF THE
STATE OF ALABAMA DEPARTMENT OF
TRANSPORTATION, Defendant, Civil

1 Action Number 2:07-CV-645-MEF, now
2 pending in the United States District
3 Court for the Middle District of
4 Alabama, Northern Division; that the
5 foregoing 170 typewritten pages
6 contain a true and accurate
7 transcription of the examination of
8 said witness by counsel for the
9 parties set out herein; that the
10 reading and signing of said deposition
11 was waived by witness and counsel for
12 the parties.

13 I further certify that I am
14 neither of kin nor of counsel to the
15 parties to said cause, nor in any
16 manner interested in the results
17 thereof.

18 This 21st day of June, 2008
19
20

21 Karen Reagan Drinkard, CCR #005
22 Reporter and Notary Public
23 State of Alabama at Large